Heiko Bubholz

Theoretical Foundation of an European Federation

With Richard N. Coudenhove-Kalergi's
Draft Constitution of the United States of Europe

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List of Abbreviations

EC	European Community/Communities
ECJ	European Court of Justice
ECSC	European Community for Coal and Steal
EMU	European Monetary Union
EP	European Parliament
EU	European Union
IGC	Intergovernmental Conference
MEP	Member of European Parliament
TEC	Treaty establishing the European Community
TEU	Treaty on the European Union

"If you want to build a ship, don't round up men to get wood, to perform jobs and to divide work; but teach them the desire of the wide and endless sea."

Antoine de Saint-Exupery · *Wisdom of the Sands*

1. Introduction

Europe. What is it? Generations of scholars dedicated many efforts to answer this question. Much of what is today considered to be *European* is a result of a century old, unprecedented evolution. Some historians maintain that the 20th century had been a short century, one of extremes – starting with a sequence of catastrophes followed by promising attempts to create a new and peaceful order in Europe. History was in a hurry. The century began in 1914 when lights extinguished all over Europe for more than 30 years (Grey 1918). After having witnessed a deeply polarized world, the century ended in the hopeful atmosphere of a post-Cold War Europe and broad prospects for a final re-unification of Europe. But soon, those promising attempts, founded on a new European optimism and self-confidence, were facing a new tragedy in the Balkans, which eventually set precedence for Europe's future challenges (Halberstam 2001, 86-7; Knopp 1998, 7-8).

European peoples could not decide for reconciliation and a peaceful rapprochement until the early 1950s. Under the pressure of the emerging Cold War – or a status of non-war – a number of European politicians were finally able to draw the lesson from the recent catastrophes and resolved to revive an old, yet not old fashioned idea of the *United States of Europe*. Though, the indigenous nation-state remained an indispensable building block of the European movement. Yet, its role restricted increasingly the integration process from a point a certain degree of reconciliation and cooperation was reached. Indeed, it took Europe's collapse following World War II and the status of a semi-peace – or semi-war – condition under the Cold War to launch the courageous project of the European Community.

Richard Coudenhove-Kalergi once held that tomorrow's historians would not easily explain why Europe's unification did not occur in the first years after the Second World War (Coudenhove-Kalergi 1971, 170; 1966, 284). Indeed, only 40 years later, governments, caught till then in their pre-war ideology and terminology, went on to continue this process with the Treaties of Maastricht and Amsterdam. Those Treaties led to a new stage of integration obeying the initial objectives of the Paris and Rome Treaties to "lay the foundations of an ever closer union among the peoples of Europe" (Preamble of the Treaty establishing the European Community).

The creation of the European Union could have "mark[ed] a new stage in the process of European integration undertaken with the establishment of the European Communities", while "recalling the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe" (Preamble of the Treaty on the European Union). Thus far – from a rather technocratic perspective – the experiment of European integration proved to be successful. Nonetheless, after all the external obstacles ceased to exist and the internal developments made significant progress, such as the euphoric and historically unprecedented introduction of the *Euro* currency made apparent, criticism arise concerning the future ability of the European Union to cope with all its internal – and prospected external – problems and dynamics.

Since paper is quite patient media and public opinion posses only a short memory, much had been articulated to handle and overcome these predictable problems. Gradual adaptation of the EU technocratic structure to arising problems deem in the short-term perspective sufficient to proceed with the process of European integration. Politicians and academics with

rather visionary ideas proposed a number of institutional changes fundamentally reshaping the European Union. Accordingly, during the last years there seemed to evolve a competition among European statesmen in presenting their ideas of a future Europe. Particularly one of those speeches, namely of Joschka Fischer, gave the initial idea for this book. Moreover, the writing of Richard N. Coudenhove-Kalergi proposes some instructive ideas, which are also considered subsequently. The reader thus might be aware that the following chapters are influenced by these suggestions, while all taken efforts may not prevent the author to present his views on the future of Europe in a somehow biased manner.

Though a lot had been written on the history of the process of European integration, there seems to be a rule that old, visionary, sometimes revolutionary ideas have to be re-vitalized or even re-discovered – after one or two generations of scientist and students tempted to define and refine the initial thoughts. Thus, probably every second generation reveals and celebrates the initial ideas (to introduce an evolutionary approach concerning these patterns, see Falger 2001, 44-5). This shall be the case also with this book. Reconsidering Europe from the scratch will inevitably require a long-term perspective and some patient with the following debate.

Since the author is not in favor of a narrowly minded attitude, this contributions' propositions shall depart from a sole attempt to reform Europe. Inevitably, the current status of European integration has to be elaborated in a limited scope to identify the actual problems, which the EU is contemporarily confronted with. This shall lead to the discussion regarding the establishment of a European State and its ideal organization. Hereafter, the possibility of a European State and its internal structure will be subject of the debate. In an ideal world it would be effortless to realize

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these considerations. Since we are far from living under such conditions, some thoughts should also be devoted to the practicability and applicability of state theories on an experiment like the EU.

In fact, this book ought to be a comprehensive discussion of nothing less than a European State, its internal structure and particular approaches made towards this end. Or, to refer to Ronald Mackay, one of the early contributors: "Every statement about a New Europe need not be construed as having special reference to the creation of a new government for Europe, of whatever kind. But aspiration must find practical expressions or be fruitless" (1940, 37).

So did, among others, Richard N. Coudenhove-Kalergi and Friedrich Naumann. Among others, their writings predicted the development of Europe's fate and the arising alternatives. Thus, to open the actual debate some of these old but not old-fashioned ideas shall make the unprecedented opportunities of these, our days, evident.

1.1 From Paneuropa and Mitteleuropa towards the United States of Europe

Admittedly, old writings and ideas benefit from the advantage that their inherent visions have been proven through the course of history. Otherwise these thoughts would have hardly maintained their enchanted status in the collective political memory and historiography. Nonetheless, these texts, in a remarkably unbiased manner, make the problems and challenges of the present apparent. Out of a wide variety, two outstanding examples of early justification and rationalization for a united Europe shall be shortly elaborated.

Although some of the proposals have been realized, the internal organization of a united Europe was never illuminated in a comprehensive manner. Conclusively the thoughts and doubts of Richard N. Coudenhove-Kalergi and Friedrich Naumann still maintain their validity. Coudenhove-Kalergi's life and efforts easily illustrate the whole magnitude of obstacles, which the 20th century could provide to the considerations on Europe's unity (see Coudenhove-Kalergi 1966; 1971). Already in his famous, seminal 1923 writing "*Paneuropa*" he identified in an almost prophetic manner a number of predictable problems which ought to determine the fate of Europe. Moreover, in an extraordinary lucidity and brightness, Coudenhove illuminated the only tangible dynamic which will decide on the future of Europe – then and now: 'The only force, which eventually will contribute to create *Paneuropa*: is the Europeans' desire; the only force, which might ultimately impede *Paneuropa*: is the Europeans' will too' (1926, 5). In another context, Friedrich Naumann's concept of *Mitteleuropa* faces similar problems. Accordingly, 'a Central European Union [„*mitteleuropäischer Bund*"] is not a historic coincidence but a necessity. If it is not desperately desired – one has willingly to attempt this option –, since any alternative will take an even worse path' (1915, 4). Apart from this – though realistic assumptions – Coudenhove-Kalergi heralded a wide range of concrete issues, which Europe of the early 1920s faced to. Nonetheless, many of these assertions maintain – or even regained – much of their validity in today's scenario.

First, the historic development established some considerable changes in Europe's political geography, but not an overturn in its political system. This might be also applicable to the world of the 21st century. The necessity arises to raise Europe from a status of anarchy to a political organization. This form of organization is not only required to settle

internal disputes, but more so to respond to the obvious rise of non-European economic, political and military powers. This even more applies to a post-September 11 world.

The process of proper organization of Europe is inevitably necessary to guarantee Europe in its cultural, social, ethnic, religious, ideological, economic and political plurality. Coudenhove considered *Paneuropa* as a political and economical determined association of peoples ensuring the existence and the complex composition of Europe. This might ultimately answer the question whether Europe will be a combination of nation-states or of ruins (Coudenhove-Kalergi 1926, 8). In so arguing Coudenhove-Kalergi had then not witnessed the cruel deeds, which man is able to do to each other, of World War II and the Cold War. Nonetheless, he had some obvious and to a certain extent, still relevant reasons for his pessimistic imaginations.

Globalization in its early appearance rendered Europe's economic and political relevance to a minimum, while the continent struggled to cope with the abilities and dynamics of its increasingly powerful neighboring regions. Thus, Europe – even today – is still emerging out of a desperate present towards a vague future. The continent lost its extensive power since its peoples were disunited; Europe may loss its independence and its wealth again, if it is not going to come together and coordinate its efforts. Moreover – in rather technical terms – the world is squeezing day by day. If the political sphere does not adapt to these simple facts, that – as Coudenhove put it – Berlin and Paris became neighboring cities, this disharmonized technical/economical vs. political development will result in insoluble tensions. Accordingly, the rapprochement in technical/economic terms has to be accompanied by a political reconciliation of Europe's peoples and elites (Coudenhove-Kalergi 1926, 16-7).

The process of limited European integration, which we could witness during the last fifty years, was initiated through the necessity of political reconciliation after Europe's greatest disaster. European rapprochement inaugurated in the wake of World War II, which is still the prevailing notion of the present days, was the essential requirement to guarantee the sheer survival of Europe's peoples. To put it in the words of Richard von Weizsäcker: 'There has not been a fresh start, but we had the chance to begin once more on a wrecked foundation – and finally we realized it' (1985).

In contrast, Coudenhove-Kalergi recognized the inevitability of an integration process to *preserve*, not to *rebuild*, what European pluralism had achieved. Coudenhove's approach urged Europe's peoples – but more so its political elites and leaders – to establish a common ground for future endeavor. The need to cope with the past was considered by him to be solely a minor task. Coudenhove-Kalergi's spirit aspires to create and organize a *next Europe* in order to preserve the magnitude and richness of its pluralistic structure. Schulze illustrates this desire in a more recent approach (2002, 41): 'Our epoch seems to be characterized that men's attainments deem to gain by refraining from nationalist thinking in favor for the European perspective. It thus paradoxically may appear that nothing is as European as its fragmentation in nations and nation-states. This variety in unity creates Europe since it is envisioned; the plurality of Europe's states; the mixture of national identities and their enduring disputes distinguish this continent from other geographically rather homogenous cultures and continents since eternal times'.

Admittedly, the world has changed since Coudenhove-Kalergi's days. Nonetheless it remains an unalterable truth that the *European question* may only be solved through a union of its peoples, through the

establishment of a (Pan)European '*Staatenbund*'. At least, the integration process overcame what Coudenhove illustrated in a remarkably instructive language: 'Europe as a political term does not exist. The part of the world, which carries this name, includes a chaotic set of peoples and nation-states. It is ammunition's stockpile of international conflicts'. Thus, Europe is not any longer 'a retort of future world wars' (Coudenhove-Kalergi 1926, 22).

This shall lead to the assessment of the current status of Europe's integration. Eventually, the comparison of present problems and obstacles in this process with those partly unbiased doubts of early concepts of European integration may provoke some suggestions, which shall then be part of the latter chapters.

Friedrich Naumann illustrated the challenges for those who decide to create and organize Europe anew: 'At least one generation will have to struggle for the foundation of *Mitteleuropa*. Yet, it is decided upon today, whether governments and peoples in general know and resolve to do so' (Naumann 1915, 5). Considering the actual history of European integration (Gasteyger 2001), it took already more than a generation to establish the EU in its present semi-supranational/intergovernmental shape. The accomplishment of a European State might thus take another generation's time and efforts. This shall set also the basic timeline, which this discussion is attached to.

1.2 Current Status of European Integration

This book is not dedicated to explain, interpret or evaluate the present decision-making processes of the EU bodies. Nonetheless, it deems necessary to identify some relations and power structures of the EU institutions – as these institutions inevitably will play a significant role in either future organization of European integration. Thus, the following paragraphs shall describe the role and influence of the main EU institutions in the policy-making activities.

Jacques Delors himself declared that the treaty establishing the European Union would not become a part of fine literature. Drafted by lawyers, it is, according to Delors, hard to understand without a manual (1993, 4). The EU in its present and approaching shape is a construction best described through its *sui generis* character. Despite the lack of sovereign and fully independent institutions, it is not a state yet. Nevertheless, the EU controls and governs already several areas, which are typically administrated by sovereign states. Due to the history of integration and the more feasible and advantageous economic rapprochement, most of the occupied fields of policy are economic in nature. These abilities do not derive from a self-sustaining development, but from an agreed transfer of competencies from the Member States to a higher organization. The *sui generis* character of the EU had also been confirmed through decisions of several national courts, which, however, were eager to maintain the nation-states' roles. Accordingly, the EU is a construction between a federation ("*Bundesstaat*") and a confederation ("*Staatenbund*"). The German Constitutional Court coined the term of the so-called "*Staatenverbund*", which implies the respective Member States'

active participation in a supranational organization, while preventing the country becoming a subordinate part of a European State (Stüwe 1999; Bundesverfassungsgericht 1994, 181).

Legal Foundation of Europe

A constitutional framework of the EU may be assumed through Article 6(1) TEU, stating that the "Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law". Jo Shaw identified a *multilevel constitutional system*. It currently consists of the 25 constitutions of the present Member States and the European Treaties itself. Another peculiarity of the European constitutional framework and legitimacy is henceforth revealed in Article 6(2) TEU, implying a unity or even fusion of the legal and constitutional order of the EU. Hence, the EU derives its power from its Member States and does so regarding its legal foundation (Shaw 2000, 172-173; Bundesverfassungsgericht 1994).

Article 1 TEU provides that decisions of the EU have to be taken "as closely as possible to the citizen". This refers to the principle of *subsidiarity*, which became the leading doctrine of the EU, in Article 2 TEU, extending the Article 5 TEC provision to all fields of policy of the EU. The EU Treaties, however, do not grasp subsidiarity by its definition. Article 5 TEC defines the principle so that higher authorities should act "only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community".

Notions of subsidiarity may already be found in times of Aristotle. Subsidiarity is far more than sheer decentralization. Especially the provisions in the EU Treaties are rather a rational argument concerning politics (Gaster 1998, 22, 38). But, in contrast to the EU/EC provision, a pure definition of the term demands actions or institutional acts carried out on the lower institutional level (Schmidt 1995, 946). Only in the case that subordinated units – though, being closer to it, having an advantage in regard to information on the particular problem – is by its resources and capabilities – not due to unwillingness – unable to solve the problem, superior institutions may intervene (Lampert 1988, 73). Instead of interventionist behavior, pure subsidiarity requires restrains on governmental influences, personal responsibility, and the free spread of potentials (Nicolaysen 1994, 157; 1999). In contrast to Article 5 TEC, there is no trace of a term '*better*'. It may be assumed that the superior institutions of the EU could carry out all actions '*better*', since they have in general more resources at their disposal.

Furthermore, Article 6(4) TEU ascertains that the "Union shall provide itself with the means necessary to attain its objectives and carry through its policies". Though potentially contradicting the principle of subsidiarity, this provision opens the opportunity for the EU to act as a supranational body, while increasing decisional autonomy of the Union – even among the intergovernmental pillars (Shaw 2000, 174). The quasi-sovereign rights of an emerging European State and its law and policy making activities seem to be limited by forces outside and inside the Union, i.e. the Member States. Policy making in the European Union is hence limited, and actions by EU institutions are encircled through competencies, which the Member States conferred to the EU. Thus, the EU has a kind of substantive constitution (Shaw 2000, 181-5).

Integrated EU Institutional Framework

The most visible but lesser dominant institution among those of the European Union, the Commission, is based on Article 213 (1) TEC. Its authority ends formally at the corner stones of the first pillar, the European Community. The Commissioners, "whose independence is beyond doubt", are chosen in quota among the Member States. Article 213 (2) par. 2 TEC requires that in "performance of these duties, [the Commissioners] shall neither seek nor take instructions from any government or from any other body". To quote Craig/Búrga, "excessive partisanship is therefore precluded, but one should not necessarily expect total neutrality". Nevertheless, the Commissioners are subject to the president of this body as *primus inter pares*. Article 219 TEC provides that the "Commission shall work under the political guidance of its President". The *President of the Commission* – as the supranational EU's administrative body – plays an important role in shaping the Commissions policy, in negotiating with the Council and the Parliament, and in determining the future of the Community as a whole (Craig/Búrga 1998, 50). The Commission – being the only executive, but not implementing, supranational authority among EU institutions (apart from its legislative and administrative functions) – is perceived to fuel and facilitate further integration. It is recommending policies, administrating the EU/EC Treaties and acting as a guardian and watchdog – beside the ECJ – of the Community interests. The nomination of the Commission must be approved by the *European Parliament* (Shaw 2000, 110).

Article 203 TEC determinates the representatives of the Council being members of the governments of the respective Member States. This may imply a completely opposing character of this body in regard to the

Commissioners' required independence. Inevitable, the Council is the anchoring ground for every intergovernmental sentiment in the EU. The importance of this fact shall be elaborated later.

Beginning with the SEA, the European Parliament gained an increasingly active role in EU's decision and policy-making processes. However, the expanded authority of the Parliament does not provide equally the whole Community with a more democratic image. So the number of MEPs does by far not represent the respective proportions of the populations of the Member States (Shaw 2000, 62-7).

Article 230 par. 1. TEC finally provides that the "Court of Justice shall review the legality of acts adopted jointly by the European Parliament and the Council, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties". The Judges, according to Article 223 par. 1 TEC, are chosen among "persons whose independence is beyond doubt". Craig/Búrga (1998, 81) assert that "the nature of much of the ECJ's jurisprudence, the wishes of individual Member States have had little influence on its decision-making. On the other hand, this is not to say that the Court is immune from political pressure, nor that it takes no account of the general wishes of the Member States in its decision-making". The ECJ is, with its progressive case law, the actual EU body capable and willing to reinforce the integration process. The Court is equipped with the means to accomplish the decision and policy-making process. Due to its pro-integration attitude, much of particular national interests of the Member States in the legislative acts of the EU may be balanced through this institutional counterweight.

1.3 Problems of the Integration Process

Fortunately, the EU – since usually caught in its technocratic considerations – discovered and revealed some of the emerging problems resulting from its peculiar construction. The Commission's White Paper on Governance illuminates some of the obstacles for a successful process and progress of future European integration. Governance in the perception of the Commission is the entirety of "rules, processes and behavior that affect the way in which powers are exercised at European level, particularly as regards to openness, participation, accountability, effectiveness and coherence". While the Commission is eager to find a "*magic cure*" to reform the procedures and methods of European governance, the identified obstacles in the European integration process require, indeed, much more efforts.

The most prominent example – and most likely the result of present EU's characteristically minimum denominator bargaining process – is the so-called *Community method*. Appreciating and recognizing the diversity of political cultures among the current and prospective Member States, the *Community method* brings together traditions and ideas, which are compatible only in a limited manner. It is at least questionable whether – as recommended by the White Paper – EU institutions will ever accomplish to refocus on their respective tasks if the persisting method of policy-making is not altered.

The White Paper may prove as the best evidence. Asking what the Community methods mean, there is no easy answer to it: The "Community method guarantees both the diversity and effectiveness of the Union. It ensures the fair treatment of all Member States from the largest to the smallest. It provides a means to arbitrate between different interests by

passing them through two successive filters: the general interest at the level of the Commission; and democratic representation, European and national, at the level of the Council and European Parliament, together the Union's legislature. The European Commission alone makes legislative and policy proposals. Its independence strengthens its ability to execute policies, act as the guardian of the Treaty, and represent the Community in international negotiations. Legislative and budgetary acts are adopted by the Council of Ministers representing Member States and the European Parliament, which is representing the citizens. The use of qualified majority voting in the Council is an essential element in ensuring the effectiveness of this method. Execution of policy is entrusted to the Commission and national authorities" (European Commission 2001). Thus, Erik Eriksen warns that the technocrat approach of the EU's bureaucracy may face irresolvable problems in terms of the admired democratic type of governance (2001). Or, to put it in the words of Joschka Fischer: 'The enormity of regulations on the EU level is the result of inductive attempts of communizing following the *Method Monnet*. It is a manifestation of multilateral compromises in the today's '*Staatenverbund*' of the European Union' (2000).

Though the European Union constitutes an unparalleled organization with intergovernmental and supranational elements, the combination and concentration – or better amalgamation – of executive and legislative authority among present EU institutions is hardly beneficial to the proclaimed effectiveness and wide legitimate basis of the EU. It rather creates a defuse image of democratic deficits, lack of political accountability and legitimization, and misrepresentation, which, in the long run, will hardly provide for solutions to cope with the emerging, persisting,

and ever complicated problems. It thus may be a matter of concern whether or not there will be a better mode to administrate and govern Europe.

So far, the Commission acknowledges the necessity to assure the future importance and workability of the Community's institutions. The technocrat approaches of the Commission and other EU institutions thus may be perceived in the notion of *too much, too late*. Andrew Moravcsik does even identify a looming "Brussels despotism" (2001). He claims "that the broad lines of European integration since 1955 reflect three factors: patterns of commercial advantage, the relative bargaining power of important governments, and the incentives to enhance the credibility of interstate commitments" (Moravcsik 1998, 3). Moreover, Stanley Hoffman asserts that EU's functional scope is boarder and more workable then ever, but "its system of governance is too Byzantine to function well, too obscure to be understood by its citizen, and too paralyzed by antagonism" (2001). The dominance of the Council will on the long run – assumable in an even increased manner after the recent enlargement is being digested – lead to politics and policies of national, but less of preliminary European interest.

In contrast and apart from this, it is widely accepted that the judicial branch is well tailored to EU's pluralistic structure. The *Charter of Fundamental Rights* may accelerate this type of reinforced integration. It may even provide the positive evidence for a successful, federalized integration of the jurisdiction sphere as a predecessor for further endeavors of an ever deeper and wider Union (McCrudden 2001; Möllers 1999, 7; Schmitz 2001; Zuleeg 2001, 210). In that vein, Ernest B. Haas identified a kind of self-sustaining process – or spill over effect – within the judicial sphere in favor of European integration (1958, 300-1).

Nonetheless, Joschka Fischer asserted that the *Method Monnet* worked well during the past fifty years. Despite the present and prospected

future challenges, however, it seems to have reached its limits – not to speak from any attempts to deepen the European integration any further: 'Already today, it is inevitable that the EU's internal logic of the *Method Monnet* is in an irresolvable crisis' (Fischer 2000).

Intergovernmentalism is defined by Moravcsik as the following lines illustrate (1991, 223): "From its inception, the [Community] has been based on interstate bargains between its leading member states. Heads of government, backed by a small group of ministers and advisers, initiate and negotiate major initiatives in the [Council] or the European Council [Summits]. Each government views the [Community] through the lens of its own policy preferences; EC politics is the continuation of domestic policies by other means. Even when societal interests are transnational, the principal form of their political expression remains national". Moravcsik's notion of *intergovernmental institutionalism* is applicable to the present situation of the European Union – reiterating the awesome negotiations during the Nice Summit (Weidenfeld 2001) and those to come. Admittedly, the Community identifies, recognizes, and tries to cope with a wide variety of the surfacing problems. Nonetheless, the debate on European reforms intends to cope with current institutional restrains, while the discussion hardly focuses on long-term considerations. Already conceivable inconveniences of the future European integration process are not taken in consideration. The current debate on the European Convention makes this apparent. Unfortunately, Walter Hallstein's assertion from 1961 still remains valid in current debate: 'Europe should be raised out of its demoralizing situation. It shall not be any longer subject to political decisions made elsewhere, but ought to become a regular element in the political scene' (1961, 268-69).

Since the developments adjoining the European experiment and its environment already signify an unprecedented magnitude of impenetrable disparities and discrepancies in the foreseeable future, it is inevitable to consider at the earliest possible occasion on a consciously re-foundation of Europe – recalling Winston Churchill's timeless question: 'How mighty Europe would be without antagonism?' (see Coudenhove-Kalergi 1971, 134).

If, assumable, we are approaching a new phase of *Euro sclerosis*, the resolution of the existing and future problems to grant to the existing Union the structure and characteristics of a *State sui generis* – an alternative among many circulating ideas – is a worthwhile pursuit. Or, to apply another metaphor, if present day's EU is to compare with a formerly well operating mechanic apparatus, which – due to inevitable erosion and over the course of time – is meanwhile shaking, stuttering and stumbling, then – instead of hardly sustaining repairs – it seems worthwhile to re-construct this peculiar machine from the sketch.

2. The Conceptual Foundation

The following paragraphs' aspiration is not to elaborate or identify how the current European Union and its bureaucracy have to be understood, but instead establish the conceptual framework for a *future* Europe.

During the Laeken Summit the European Union – or its Member States – eventually recognized and acknowledged the immediate necessity for institutional reforms (European Council 2001). Specifically heads of state decided to establish a European Convention. Though the Convent presented a paper, which will become the foundation of an initial European constitution, the Convention's chairman, Giscard d'Estaing warned beforehand, that this forum eventually must not interfere in nationally sensitive issues concerning the federalization of Europe (Giscard d'Estaing 2002). Such a preoccupied attitude, however, is not applicable to this book. Hence, intermediate results of the Convention will be taken in consideration only in a limited scope. Rather, this contribution is intended to provide an *alternative* vision of a future Europe, based on pure theories on state and not necessarily on the contemporary and fashionable debate regarding the sole adaptation of current policies, such as the Commission's White Paper proposes (Möllers 2001).

At this point it is worth noting the existing linguistic differences regarding the terms of polity and policy, which do not exist in all languages. While the first expression focuses on structures and constitutional norms of a political system, the second term solely penetrates results, deeds or procedures that the respective institutions are subject to (Mols 1996, 26). Aim of this paper will be a discussion on polity patterns of a future Europe. Though Giscard categorically excluded any debate on federal ideas, for our

purpose it is necessary to identify applicable theories on state. This will imply some general thoughts on the possibility and character of a European State. To complete these considerations we shall evaluate which organizational structure such a construction might assume. All these considerations have to take place in the *polity* dimension of a future Europe.

2.1 State Character of Europe

Throughout history, all fundamental writings on state theory seem to be a product of immediate crises, which the respective authors faced to (Ziegler 1994; Gröschner et al. 2000). Before elaborating the particular theories, it is worthwhile to discuss whether the European Union and its future descendant meet the criteria of being a *state*. To put it in the words of Frederic Bastiat, the French philosopher and liberal thinker of the 19th century: "I wish that someone would offer a prize, not of five hundred francs, but of a million, with crosses, crowns, and ribbons, to whoever would give a good, simple, and intelligible definition of this term: *the state*" (1975, 140).

Georg Jellinek's (1914, 396) widely accepted characterization of a state includes three major elements: A state is perceived as a politically and legally determined association of individuals and regions, which is constituted of an internally autonomous power ("*Staatsgewalt*"), a people ("*Staatsvolk*"), on a particular area ("*Staatsgebiet*"); while being externally fully sovereign as subject solely to the international law (Ipsen 1999, 33).

The autonomous state power is the initial combination of executive, legislative and judicial authority of the state over its population. As characterized by Max Weber it is the monopoly of legitimized physical

power. Although this autonomous power extends over its people and territory, it is simultaneously limited to it. It is the manifestation of internal sovereignty of the people, and hence of the state itself. Realistically the state power is only exercised if a significant efficiency could be assumed. This is, on the other hand, an illustration and articulation of the legitimacy of the rulers through the ruled. The people, in terms of state theory, are the entirety of individuals who constitute the citizenship of the concerned territory for a longer period. It is thus significantly more than relevant sociologic theories provide regarding the term of nation. But to a certain extent, it is less than the relevant population of the concerned area. Finally, the state territory is the assemblage of all geographic areas considered to belong to the respective people, while constituting the necessary opportunities and security for its population (Schmidt 1995, 907-8, 922; Weber 1895, 20; Ipsen 1999, 54-8; Mach 1993, 176-7).

To apply this definition of a state to the EU, we must assume some characteristics and conditions. Possibly contradicting the thinking of some *Eurocrats*, Europe is far more than the European Union in its present, post-enlargement appearance. The elaboration of this issue should not necessarily touch historical considerations or cultural concerns (see, for example, Halecki 1957). In the words of Władysław Bartoszewski: 'The question of the geographical borders of Europe shall rather be answered by a philosopher' (2002, 860). Even if we refer to other socio-cultural, economic or political criteria, the borders of a European State remain in a vague scope. Nonetheless, if the state construction of the European Union will be constituted by the respective nation-states, it may be assumed that there exists a reasonably precise definition of the concerned territory.

To apply a rather unorthodox approach to this question: 'There is only one radical way to answer the question of European borders in

sustaining and just manner: It does not necessitate moving borders, but to repeal them' (Coudenhove-Kalergi 1926, 138). Simultaneously, any potential area of friction would disappear. The territory and the external borders of a European State would thus be constituted from those of its Member States.

While it is beyond the scope of this book, the issue of *identity* among European people(s), specifically the legal notion of a universalistic justification for a transnational citizenship of the European Union has already been introduced in Article 2 TEU. The status and, hence, rights of an EU citizen continue to rest upon the nationality of a member state and thus remains a prerogative of the Member States' governments (Meehan 2000, 7, 13). This citizen status is connected to a variety of rights, which, paralleling those of the respective individual's nationality, may contribute to the establishment of an initial European people. Today it may already be assumed that these people will neither equal the concept of a nation (Anderson 1998; Bredow 1998; Nash 1989; Renan 1882; Smith 1994), nor be created out of the whole entirety of Europe's peoples' plurality.

To avoid obstacles resulting from such considerations Coudenhove-Kalergi intended to apply a rather artificial construction. Each individual will be of a European nation, whose *faculties* will be the French, the German, the Polish, etc. It is thus a sole duplication of the individual's identity. The acceleration of these identities requires furthermore the separation of state and nation. In a future Europe, there will prevail free nations in free states (Coudenhove-Kalergi 1926, 131-6). Thus it seems beneficial and less controversial to substitute the European people with the concept of a European citizenship.

Finally, the question of appropriate autonomous state power renders the discussion a little bit controversial. Though Jean-Claude Piris asserts

that the present EU is lacking some crucial elements of a sovereign state, it is obvious that the EU/EC Treaties have a constitutional character. The Community is currently exercising some sovereign tasks, while, for example, taxation and monetary policy, and other major fields remain under strict national control. Nonetheless, its autonomous power is limited by the will of its Member States (Piris 2000, 10-2). To take full advantage of the actually approved state power of the EU, a sole reform of the EU institutional framework will have only limited effect. The prevailing ambiguity concerning this rather sensible issue leads to the discussion regarding the establishment of a firm framework of autonomous *European* state power based upon particular state theories.

2.2 Applicable Theories on the State

Frederic Bastiat stated that the "function of government is to direct physical and moral forces of the nation towards the ends for which it was founded" (1975, 81). Thus, it is not the question of *how*, but to what *purpose* a (European) state is to be found; specifically, to what extent its government will be responsible and accountable for its exclusively conferred tasks.

Plato's indigenous state was inaugurated to guarantee the sheer existence of its individual inhabitants. States then were invented to ensure the population's existence in regard to external threats, whilst the internal stability and security was to guarantee. Additionally, conflicting internal interests required the establishment of a set of rules. The state thus was indispensable to secure and promote the individuals' achievements. The precondition of latter state theories dictates the existence of a state or the lack there of depending of whether or not the people perceive it beneficial to live in a state-like scenario.

The state was formed to guarantee internal stability and security while simultaneously ensuring the population's existence in regard to external threats. People themselves, willingly and consciously, subordinated their individual interests under a state organization. They conferred a part of the absoluteness of their individual and impenetrable rights in a social contract to a higher authority, which, in exchange, guaranteed their existence (internal and external security) and wealth through a set of rules and the means to enforce them. Prominent representatives of these ideas of transformation from *pre-society* to *society* include John Locke and Thomas Hobbes. All these basic theories share a concern on the violent origins of mankind and the conversion of groups of individuals in a regulated (state) environment (Gröschner et al. 2000). However, discussing possible theories for a European State, these ideas seem to be inadequate.

The existence, security and wealth of individuals remain to be the initial task of the nation-state. It may be assumed that the purpose of a European State is correlated only to a certain extent to this intention. Instead, the motivation for – and justification of – a European State is rather conceivable as to secure and strengthen the existence and wealth of its constituting societies. From this perspective the ancient and medieval ideas are not so different to present challenges, yet in another dimension.

David Hume's observation best examines the individuals' reasoning to subordinate under a state: "Here then is the origin of civil government and society. Men are not able radically to cure, either in themselves or others, that narrowness of soul, which makes them prefer the present to the remote. They cannot change their nature. All they can do is to change their situation" (1949, 537). A European State could in fact change and improve the situation of the European people, peoples, and its nation-states.

The dilemma, which the debate faces at this point, is the fact that most European visionaries do not concern the internal organization of a prospective European State. Nonetheless, some theories of the modern nation-state seem to be applicable and thus ought to provide the basis for further discussion.

In particular four fundamental writings – particularly those of Jean-Jacques Rousseau, Charles de Montesquieu, the Federalist Papers' Publius and Max Weber – will comprise the foundation of the theoretic justification of a European State. Taking a rather pragmatic approach, there is only one justification of the selection and arrangement of these theories. It is the simple fact that bits and pieces of these concepts may be assembled into a thorough framework, which provides for the establishment of the prospected European State. To put it in the words of Mark Twain: "There is something fascinating about science. One gets such wholesale returns of conjecture out of such a trifling investment of fact" (1982, 208).

This contribution's objective is not to elaborate the challenges or even threats, which the European Union is facing in the foreseeable future in economic, social, political, or even militarily terms (see, for example, Algieri 2002; Clark 2001; Creveld 1999; Prodi 2001; Tiersky 2001; Weidenfeld 2001; Weidenfeld/Giering 2002). It may rather be assumed that the somehow vague and volatile, yet prosperous, union of states is not able to cope with these challenges and threats. Noteworthy and still relevant in this regard are the remarks of Montesquieu's Persian's fictitious traveler who characterizes Europe as the continent of eternal hostilities, which ultimately may bleed to death (Timmermann 2001, 37). Though such a scenario is hardly conceivable at present, at least among most regions of West and Central Europe, the recent developments in the Balkans may at

least convey an impression that wars or war-like scenarios are still inherently likely and feasible in our post-modern times. It is thus a rational decision of the individual to confer privileges and confidence to a higher authority, not only subordinating some of the indigenous, unlimited freedoms under the individual's nation-state, but also under the European State, in exchange for security, stability, and wealth.

This is what Jean-Jacques Rousseau described as a kind of healthy selfishness (not a self-absorption), just the unique *amour de soi* (Gröschner et al. 2000, 197). Human mankind – according to Rousseau – would simply perish if it does not decide to change its mode of co-existence. Following his traits, this will have necessarily to result in the unavoidable establishment of a republic, allowing mankind to live together in a cooperative manner. Rousseau insisted that man is born free, but everywhere being bound in chains (1977, 5). This is not the result of his consent to abstain from some of his indigenous rights in exchange for the privileges to be a citizen of the state. Rousseau rather ties this observation to the development within the state. Only the intuitions of the state may ruin the universal freedoms of men (Gröschner et al. 2000, 194). This does not contradict the act of voluntarily conferring rights to the state, but is the product of the institutional framework, which the individual is subjected to. The only criterion, which ought to be referred to justify these institutions, is whether or not they obey the *general will* of the individuals. Hence, the *general will* – the *volonté générale* – is more than an accumulation of the particular individuals' wills. Instead, it reflects the basic *minimal consensus of the society*, which provides the spirit and confidence to all acts of the state's institutions. Rousseau claims that the *general will* is always right and thus intends on the public good, while the particular will or interest of

the individual solely reflects its personal preferences, which most likely will run counter to those of others and the *general will* in particular (Rousseau 1977, 30).

To ensure the greatest possible homogeneity of the people's *general will* Rousseau advocates a radical people's democracy. In contrast to other contract theories, Rousseau categorically denies the possibility to transfer sovereign right from the indigenous sovereign – the citizens – to the state. Instead the state and institutions evolve to the servant of the people. Even the idea of representation would lead to an alienation of rulers and those ruled (Schmidt 2000, 97). Rousseau actually envisaged a crowd of countrymen, doing their state affairs sitting under a tree, as an ideal type of state, assuming that they might be the happiest rulers and ruled one could imagine on earth (1977, 112).

This, however, already indicates the constraints which Rousseau's concept of a democratic state would have to face, not only in his Geneva community, but also in a post-modern nation-state, not mentioning the European dimension. Rousseau himself jeopardized his visions of democracy, asserting, that if 'there would be a people of Gods it would govern itself democratically. *Such a perfect government does not suit to human mankind*' (1977, 74).

Though Rousseau's concept of state institutions proved to be unrealistic, Judith Shklar asserts that the social conventions, which are deemed necessary in a not yet ideal state, may justify Rousseau's metaphorical chains (1998, 264).

Published several decades before Rousseau, Charles Montesquieu major work needs necessarily to be discussed subsequently. Indeed, it seems to

provide the lacking characteristics and realistic corrections to Rousseau's ideal state.

According to Montesquieu, laws unfold their positive consequences only, if they take – among different cultures varying – political realities into consideration. It is thus necessary – while referring to Rousseau's metaphor – to identify and apply *appropriate chains*, which the individual has to subordinate for his own and the sake of the state. Since Rousseau's egalitarian ideas appear unrealistic and – as history made evident – were sometimes misused for the purpose of excessive uniformity, Montesquieu anticipated the negative effects of such superficially just conduct (1965, 184).

To prevent a state from any such deceptive developments – either process of excessive uniformity or the illegitimate accumulation of power – it is inevitable to find a mode of co-operative co-existence in a state with workable and reliable structures and institutions (Blum et al. 1997, 151). Montesquieu's achievements are thus commonly perceived in the establishment of a theory of a clear separation of powers; the idea of the separation of state power in more or less independent judicial, executive and legislative branches. Indeed, Montesquieu's thoughts are widely applied in present, post-modern democratic nation-states as a *division* of state power.

Elaborating the basic theory, we shall rather focus on an ideal *distribution* and *balance* of the authority and power which the citizens confer to the state. The pure and often rhetorically imprudently applied *division of powers* would both isolate the state institutions and render it irrelevant. Such a scenario would correspondingly weaken the state's authority, while provoking susceptibility for occupation or even seizure of state structures through detrimental peripheral groups not acting for the

sake of the common good. The *separation of powers* – or better, its distribution – will instead lead to the creation of an equilateral triangle between legislative, executive and jurisdiction (Schmidt 2000, 84). Thus, it is necessary to tighten the reins regarding the particular position of either branch. To put it in the words of Montesquieu: 'To prevent and refrain from misuse of state authority it is inevitable to construct the state structure in a way that power limits power' (1965, 215).

The basic assumption is that there cannot be individual, political and economic freedom if only one group or one state body dominates two or all state branches. Moreover, just freedom and equality cannot prevail if all major groups of the society are represented in a certain way among the three branches. Finally, equality and independence are the fundamental conditions for the public consensus regarding people's cooperation within the society and state (Schmidt 2000, 85). When regarding the concept of a European State it is necessary to bear these notions in mind.

Montesquieu granted the legislative authority solely to a parliament. As the adequate body, it shall monitor the actions of the executive branch. Any amalgamation, especially of legislative and executive – hence governmental – authority, could easily jeopardize the balance of state powers by shifting and hoarding excessive authorities on either side (1965, 217). Apparently, reconciliation among state powers is accomplished through a set of interrelated rights to veto - the "*droits d'empêcher*" (Schmidt 2000, 87).

Montesquieu insisted that his elementary ideas are only applicable to territorially limited states. Though not further characterized, he claims that geographically extensive states will have to evolve into despotic regimes (2000, 197, 200). This assertion was challenged by the rise of the United

States of America. In spite his hesitations, Montesquieu's basic ideas of distribution of power and institutional balance provided the foundation for its constitution (Blum et al. 1997, 141). Its constitutional contract was by far not immune from political hazards. In fact, it took several efforts through an anonymous Publius to convince its fellow citizens to establish a state out of cultural pluralism and heterogeneous population on a vast territory.

Indeed, as Shklar points out, the authors of the Federalist Paper had to answer the question, whether "small societies in the classical pattern, and the egalitarian virtue in a small societies could survive only under democratic political arrangements in which the sovereignty of the people expressed itself in fairly direct, participating ways, and the distance between voters and representatives was slight", while the envisaged "constitutional order would be in every way superior to all other republican governments" (1998, 254). The authors of the Federalist Papers – Alexander Hamilton, James Madison, and John Jay – disproved Montesquieu's doubts concerning the territorial limitation of democracies. Nonetheless, as Madison put it, the Federalist Papers' arguments are generally based on the fundamental theory of Montesquieu: "The oracle who is always consulted and cited on this subject is the celebrated Montesquieu" (Hamilton/Madison/Jay 1999, № 47, 269).

The Federalists' pseudonym Publius raised the discussion to a new level. It was no longer a matter of basic concerns regarding the individual consent to exist in a democratic society, but on new patterns of cooperation among societies to secure the basic needs, such as internal and external security, stability of living conditions and wealth. The concerns of Hamilton, Madison and Jay were apparently nothing else than the discussion of problems which are today repeated regarding the

considerations towards a European federation. As Publius put it: "The definition of a *confederate republic* seems simply to be 'an assemblage of societies' or an association of two or more states into one state. The extent, modifications, and objects of the federal authority are mere matters of discretion. So long as the separate organization of the members be not abolished; so long as it exists, by a constitutional necessity, for local purposes; though it should be in perfect subordination to the general authority of the union, it would still be, in fact and in theory, an association of states, or a confederacy. The proposed Constitution, so far from implying an abolition of the State governments, makes them constituent parts of the national sovereignty, by allowing them direct representation… and leaves in their possession certain exclusive and very important portions of sovereign power. This fully corresponds, in every rational import of the terms, with an idea of a federal government" (Hamilton/Madison/Jay 1999, № 9, 44).

Though, superficially the individual sphere of state creation seems not to be taken in consideration. However, until these days the entirely new state, which Publius envisaged and which was to be found on the basis of already existing, constituted societies, provided many more privileges and benefits to its population, than any other democratically organized structure could offer and afford. In fact, it was "intrinsically better because [the new federal state] would offer its citizen stability and freedom such as no [historically preferable but only superficially ideal] city-state had ever known. Moreover, it would be a real republic, not in spite but because of its size … It would be an entirely popular state based on the consent of the governed. The very divergences among its many citizens would, moreover, create a system in which no party would impose its will upon the public to destroy the republic in the suicidal manner" (Shklar 1998, 254-5).

Among many, the idea to organize a state in federal patterns is not an alternative. Rather it shall be perceived as the opportunity to reinforce the existing constituted societies. The federal principle may have a certain impact on the internal organization of particular societies. However, it does not entirely determinate the preferences of the individual state and its population.

From that perspective, a federal organization of a yet undefined European State would provide the well-consolidated nation-state a significant increase in its security and stability. Furthermore, without interfering in internal/domestic issues of the respective state it would preserve its freedoms. Larry Siedentopp thus argues: 'Federalism in general is a means, which combines the advantages of political organizations of different size. It shall provide smaller states security and influence, while it simultaneously spread interests and ambitions to the extent that it counteracts excessive centralization of power, potentially raising to the majority's tyranny' (2002, 46).

To refer to some of the obstacles and problems in the present status of European integration, the European Union is far – probably too far – from adopting such a position.

To make it clear, all these considerations shall be seen in the light and in favor of an apparently liberal state. Specifically, the "state is the great fictitious entity by which everyone seeks to live at the expense of everyone else" (Bastiat 1975, 144). Accordingly, David Hume once stated: "Nothing is more certain, than that men are, in a great measure, governed by interest, and that even when they extend their concerns beyond themselves, it is not to any great distance; nor is it usual for them, in common life, to look farther than their nearest friends and acquaintance" (1949, 534). While to

refrain from redundant developments and to maintain what Montesquieu had in mind proposing his structure of balanced powers, it was impossible to overcome the age old dilemma between aspects of individual self-determination, freedom, and unity. It was the achievement of the creators of Publius to introduce and exercise the form of a representative government. To put it in the words of Shklar: "To legislate for one's own needs as they arose and to favor political change, rather than merely to preserve one's institutional patrimony was clearly one of the greatest departures of Publius from classical political theory" (1998, 256). These patterns are evidently applicable to Europe's state formation. Coudenhove-Kalergi thus argues: 'The desire to accomplish Europe's unity is not due to the devotion to neither love nor sympathy, but the bitter necessity' (1971, 96).

Publius' means to counteract and oppose any tendencies of disputed faction dominance, ill-minded passions and self-interests within a democratic system – hence the magnitude of challenges, which a superficially just democratic system, as Rousseau envisaged, have to face – is a republican order; a form of government with a system of representatives. The republic with its mediated distance between governed and those govern, and the actual geographical distance allows channeling people's will through their respective representation. On the other side, the pressure from interest groups is limited, specifically the sustaining establishment of a stable tyrannical majority is precluded. What surfaces and is filtered out among particular interests deems to be what Rousseau characterized as the *general will*; the aspirations of all citizens for their shared, common good.

Publius argues in favor of Montesquieu for a set of balanced powers on the yet to define upper national level. One branch has to tackle the other.

Since Publius is realistic concerning the imperfection of the nature of people regarding egoistic tendencies, he deemed it necessary that "ambitions had been made to counteract ambitions". Moreover, this system has to be extended from a purely horizontal dimension. Due to the layered federal organization of the republic, the constituting societies are able to counterbalance any attempts on the national level to monopolize power. Simultaneously, the voices of the particular societies are made heard on national level.

The authors of the Federalist Papers perceived the legislative branch as the most volatile. It inherited the greatest potential, even under democratic notion, to develop what Alexis de Toqueville later coined as the *tyranny of the majority*. Hence, it is necessary to keep reins short. Since the potentials of the judicial and executive branch tend to be overestimated in containing the legislative – which has the monopoly to issue laws, such as to preserve and extent its own role – the division of legislative power ought to construct an internal balance. A diverging bi-cameral system of representatives may initiate a set of checks and balance within the legislative branch. This idea provides the opportunity to establish a just representation not only of the constituting states/societies, but also of the respective peoples themselves (Schmidt 2000, 140; Hamilton/Madison/Jay 1999, № 39, 211). On the other side, this representation reflects the need of the smaller among the constituting societies to be heard in the huge territorial state. It does not necessarily imply a veto, but at least literally a proper representation.

Though the actual power of the legislative branch seems to diminish to a certain degree through the parting in two chambers or houses, it is still able, in collaboration with the independent judicial branch, to force the elevated executive branch in a set of checks and balances. Beside the

horizontal power distribution and separation, the executive is simultaneously limited in its actions in terms of the federal organization of the state. Publius argues (Hamilton/Madison/Jay 1999, № 51, 291): "In a single republic, all the power surrender by the people is submitted to the administration of a single government; and the usurpation are guarded against by a division of the government into distinct and separate departments [branches]. In the compound republic [federation], the power surrender by the people is first divided between distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence, a double security arises to the right of the people. The different governments will control each other, at the same time that each will be controlled by itself".

This seemingly less sustainable system of powers and balances mirrors the pluralistic interest and ideas of the federation's society/population. The motives for the proposal of such a heterogeneous system of governance are based on a moderate image of the individual's interests and the dominant requirement for individual freedom (Schmidt 2000, 118-21). Thus, Publius has to confess (Hamilton/Madison/Jay 1999, № 51, 290): "If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administrating by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions".

The authors of the Federalist Papers apply their realistic image of men also to the head of state and the executive branch. They concede much authority to this position in particular and to the government in general.

Nevertheless, it "is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such adjustments be made at all without taking into view direct and remote considerations, which will rarely prevail over the immediate interests which one party may find in disregard the rights of another or the good of the whole" (Hamilton/Madison/Jay 1999, № 10, 48).

To guarantee the sustainable workability, the envisaged state necessitates a strong leadership through the executive. So argued Max Weber. He pleaded for a power state ("*Machtstaat*"), governed – yet, not administrated – by a charismatic, politically well-trained, and sufficiently talented leader. Considerably determined on a distinct historical context, Weber identified a particular threat among several others, which may undermine any fragile and delicate attempts to create a democratic state. A democracy stripped of its leadership will have to be governed by a clique of professional politicians ("*Berufspolitiker*") – often without being professional. Indeed these political shelf-warmers, i.e. professional bureaucrats ("*politische Ladenhüter*"), only administrate what proves to be so a promising attempts to create a new, democratic state. Though Weber's observations were made under peculiar circumstances, its criticism concerning the modern democracy prove still – or again – particular significant. There might be some parallels regarding the current desires for an increased democratization of *Europe*.

In fact, Weber stated that in 'past it deemed necessary to claim for an increase of authority of the parliament's majority to raise its weight and importance. Today we witness another, not less undemocratic situation. The existing constitutional blueprints seem to be bewitched by the belief in

the infallible and omnipotence of the majority – not of the people, but of the parliamentarians'. Hence, a reinforced executive branch ought to balance the parliament's desire for unilateral – club alike – actions. Weber strongly disapproves the 'present', less idealistic, but democratically legitimated presence of political parities – or as he put it '*party machineries*' – within the political process. A strong, plebiscites presidential system shall contain the influence of the respective majority factions in the parliament; reducing any tendencies of political horse-trading. Weber was realistic enough to realize and accept the existence of some defects in the political system. He promotes a system consisting of *party machineries* within a democratic system which is determined by a charismatic leader.

Since interest groups commonly promote only their respective protégés, the parliament would be rendered increasingly apolitical or despotic in exchange for future sinecures. Correspondingly, the charismatic leader is essentially a necessity resulting from the direct elections of the president/head of the executive branch. Direct election, however, is deemed an inevitability to provide the public legitimacy – not only legality – for this office. Applying Montesquieu's principle of (counter-)balanced powers, Weber – remaining in realistic patterns – insisted that any attempts of the president to seize power and abandon control shall be sanctioned adequately: 'With any actions he should be aware of gallows and the rope'.

Weber advocates governance by organization ("*Herrschaft durch Organization*"). To provide the executive with efficient tools to accomplish its aims, it is necessary to have the respective administration/bureaucracy at the president's disposal. On the contrary, the president, as the head of the executive branch, is hardly more than the head of the administration. The hierarchic organization within the executive branch provides for the

advantage of the small numbers (“*Vorteil der kleinen Zahl*”). In rather sociological patterns, Weber promotes the effectiveness of the government due to a relative small number of individuals responsible and accountable for the actual decision-making processes. But it was also Max Weber, who warned and insisted on the factual independence, semi-democratic code of conduct and sustainability, which the bureaucracy’s body might develop. Correspondingly, it deems necessary to keep a sharp look on the inner, less democratically legitimated life of this organic apparatus (Schmidt 2000, 180-97; Weber 1895; 1917; 1919a, 392-3; 1919b, 434; 1985, 548, 573.).

According to Weber, it may be assumed that responsible, charismatic politicians and their policies in general terms are nonetheless morally self-restraining. The ethics of responsibility (“*Verantwortungsethik*”) and the ethics of conscious (“*Gesinnungsethik*”) may morally limit and determine the acts of politicians and, hence, policies in the unestablished framework of an adequate polity. However, the discussion under these notions would lead us in other spheres, and thus shall not be part of this contribution. Instead, the next chapters shall fill the presented theoretical framework with European blood and soul.

3. The European State

Friedrich Naumann testified that it requires very little effort to create an ideal construction of a European union of states: 'Just take some general ideas out of the rich treasure of basic theories on state and apply it to the respective areas in the European dimension' (1915, 231). Referring to the theories elaborated above, this shall be done in the following paragraphs. These considerations, nonetheless, will have to be narrowed down to some general arguments.

3.1 State Structure and the Balance of Powers

What has not been subject of the discussion so far is the matter and justification of the general internal structure of the envisaged European State – a federal or a Unitarian organization. Correspondingly, the particular organization of state institutions has to be developed after their place in our European State is identified.

A pure of separation of powers has never existed in history. Though Montesquieu's approach of a balanced executive, legislative and judicial sphere is increasingly bypassed in modern nation-states as result of the tendencies of internationalization and the accumulation of state tasks on the superior level, it does not, in fact, discriminate between the particular characteristics of the governmental system. To preclude any misinterpretations, it is necessary first to specify the preferable character of the European State in accordance to the theories elaborated above. Therefore, a parliamentarian system of governance and a corresponding set of institutions are commonly characterized through the parliament's

privilege to nominate and install the government, whereas the government is accountable to the parliament. Furthermore, the government depends strongly on the support of the parliament and its majority faction. The parliament plays the dominant role, while the mutual relations to the government render the latter to a servant.

In a presidential system, in contrast, the clear separation of influence and domination among the legislation and executive branch prevails much more. The president, who may or may not act as a head of government and head of state, must not belong to the parliament. This implies the necessity for the separate appointment of the government, which preferably would be elected directly. In addition, the president and his supporting administration may only be dismissed by the parliament in cases of misappropriate use of his powers. Ideally, this will guarantee the sustaining workability of the government, whereas the president is not legitimated to disband the parliament (Alemann 1995, 493; Jesse/Nohlen 1995, 615; Oberreuter 1995, 218).

Given the state theories, as elaborated in the previous chapter, the peculiarities and characteristics of a European State endorses and advocates a relatively strong presidential system – not solely a supervision of the achievements of the European integration process.

However, the dedicated reader may already have come across the apparently visible similarities of the envisaged European union of states with the political system of the United States of America. This may, above all, result from the fact that the basic theory of any conceivable European State will reflect the ideas of the Federalist Papers. To put it in other words: The creation of what became the United States of America was roughly as challenging as the foundation of what may to become the United States of Europe. There are, however, considerable differences regarding the point of

departure as well as certain occurrences among the present shape and nature of the America's polity. Most of these critical developments are indeed results of more than 200 years of the institutions' and society's evolution as well as consequence of external factors (Hübner 2001, 129). The discussed European union of states shall certainly not mirror the polity or policy of the United States of America. Presumably, there may surface particular corresponding characteristics, which should be recognized and evaluated in a respectively rational manner.

Coudenhove-Kalergi, however, characterized a healthy spirit among circulating concepts concerning the organization of the future Europe. He argued that the founding fathers of the United States of America quite consciously established their state as an example and precursor of the United States of Europe. Accordingly, Coudenhove quotes George Washington's letter to Lafayette: 'The state of liberty and unity was sown which will spring all over the earth. Once there will be founded the United States of Europe following the patterns of those of the United States of America' (Coudenhove-Kalergi 1971, 106).

Optimal State Structure

The Common Market approach and hence the European Monetary Union is determined and resolute in achieving a sole European economic sphere. It is still debated among various commentators, but not within the scope of this paper to discuss, to which extent this had been realized to the present days and those coming (see Dicke 2002; Hillenbrand 2002; Tsoukalis 2000; Young/Wallace 2000). However, considering the diversity and heterogeneity of Europe's peoples, cultures, and political systems and traditions, it deems necessary to identify and reveal an adequate structure

of governance in the envisaged European State. Bearing in mind the sheer size of a prospective European State, but also its peculiarities, minorities, and other dimensions of Europe's component societies, it is essential to preserve these distinctive European characteristics. Hence the question is which general structure of state is the preferable alternative to guarantee these values and distinct features.

In accordance to Montesquieu's doubts concerning the necessity to govern or manage a huge territorial state by despotic means, it is apparently an advantage regarding the efficiency and effectiveness to organize such a state in a centralized or even Unitarian manner. To assure that the discussion deals with the same patterns of perception, it is necessary to elaborate upon some definitions and phrases, and their terminological application.

First, there is a tremendous divergence between the concepts of federalism, centralization and Unitarianism. The latter is to be described as a significant degree of organizational homogeneity of state structures. Hence, the more the politically responsible actors (individuals or institutions) are determined to establish exclusive and limited norms, and thus to deal with and handle problems in a sole standardized way, the more Unitarian this state would be perceived. Accordingly, the notion of Unitarianism does not allow for differentiated resolutions or processes upon particular challenges under the respective order. Consequently, this is a straightforward top-to-bottom hierarchical approach, which provides for certain efficiency, but which is lacking in flexibility, while the process of centralization has to be distinguished from the statues of a centralized state. Both terms generally refer to federal structures. If a multi-layered set of government among one jurisdiction could be assumed, centralization

describes a process of accumulation of power/force upon the superior level of the respective state layer. Thus, in terms of this discussion, a centralized state shall be assumed when in existence of such a multi-layer system, decisive authorities rest upon the higher state entities. Here, a centralized *federal* state might be identified. The opposite case, of a rather *confederate* character might be assumed if the subordinated state entities acquire vital influence upon the decision-making processes within the whole union of states.

A precondition for any type of federal organization, however, is the duplication of state institutions on either level of the (con-)federation. This implies the necessity of cooperation of the particular subordinated entities in the superior structures and institutions, which, in contrast, guarantees their vital influence in these spheres. The general federal principle could additionally be explained using a co-operative and dualistic approach. While the first indicates the obligation of the subordinated entities to co-operate closely with each other and the institutions of the superior and uniting state, the second term is designated to identify a process of healthy competition between the superior state and the shared will of the equal entities in the decision-making process. This provides in either configuration for – as Friedrich Naumann put it – the consideration of the provincial peculiarities (Laufer/Münch 1997, 13-9; Naumann 1915, 234; Siedentopp 2002, 45).

What might already loom on the horizon – and which will have an effect on the discussion – are the technical/terminological difficulties to differentiate between the shades on both extremes of federal and confederate organization. Moreover, hardly any federal constitution really reflects the political realities in the respective states. To avoid further complications, federalism shall be conceived in the following discussion as

a general principle to organize a state, in direct opposition to the Unitarian approach.

Inevitably, the federal structure, in contrast to a Unitarian model, provides certain advantages regarding the prevailing heterogeneity of Europe as a continent, but more so as a state. Apart from considerations regarding the safeguarding and proper representation of particular minorities in an amalgamation of societies, it is the fact of the balance of powers among the constituting societies – the subordinate entities – and the state, which they are subjected to. This will allow for and guarantee the adherence and expression of what could be referred to as Rousseau's *general will.* To put it in other words and to recall Publius' ideas, the reciprocal containment of powers will result in the articulation of the most important desires and concerns of the constituting societies. This could be perceived as a vertical balance of powers. Moreover, Ammon and Hartwein, elaborating the two typical European concepts of state organization, argue that in a federal state it is more likely to prevent and contain tendencies towards excessive accumulation of power and authorities due to its fragmentary character (see Ammon/Hartwein 1996).

To take into account and adhering to Montesquieu's separation of powers in rather horizontal terms, the involvement and presentation of formally decentralized gathering actors in the institution of the superior state will improve the system of checks and balances within this set of institutions, since the notion of federal structure could also be applied to dimensions other than political.

The idea of cultural diversity elevates the abstract federal ideas rather to a matter and principle of life. Friedrich Meinecke argues accordingly that among European nations there is a familiar lineage, which creates a European cultural unity (1919, 282). Friedrich Naumann gave evidence that

it is the rather pragmatic belief that even in our post-modern times none of the prospective constituting states of a future European federation is completely convinced of these advantages, nor willing to abolish its comprehensive, yet ceasing sovereign rights to a superior sovereignty. Thus, the logical consequence for Naumann was not to amalgamate the existing nation-states/prospective constituting societies in one new union. Instead, the 'establishment of this superior state does not mean to deprive its constituting parts of any state character and sovereignty. It is rather the case that the sovereign nation-states will become the advocates and responsible bodies in this development. If you then intent to call this construction a federation [*"Bundesstaat"*], it will be the adequate expression and explanation for its character. In the contrary case an initial federation would not be deemed to be ever accomplished' (Naumann 1915, 233).

Apart from the historic records, these considerations reflect and respect in a passable manner the situation and status of statehood and national sovereignty – and hence of the influence in the European integration process – in today's Europe. In contrast to what had already been achieved during the last five decades, it is something significantly different than a European State ought to become. William Wallace characterized the modus operandi of today's European Union with the term of collective governance. The herein advocated establishment of a European State in a federal structure, however, will push for the evolution and expansion of the particular EU's "government without statehood" – so Wallace (2000, 530; see also Laufer/Münch 1997, 25) – to a new, much more advanced state of affairs. This implies also that the process of European integration would consciously have to depart from its old *modus*

vivendi, while installing the bases for a federal European structure – for the sake of each participating nation-state and its population.

Admittedly, the idea of the federal organization of a European State bears some need for critique, which is, however, overbalanced by those negative effects of any Unitarian attempts of state formation in European context.

In economically affiliated fields the subject of (negative) spillover effects is part of the debate. Since some political instruments cannot be directed effectively enough, neighboring regions may benefit from the respective activities, while they do not contribute to the respective costs. Additionally, this may, and often does, provoke a free-rider mentality and behavior among some of the concerned actors, regardless of regions, institutions or individuals. The problem of regionally determinate spillover effects does not appear in Unitarian organized structures due to the non-existence of diverging regions. Yet, this argument has to be opposed with the fact that the federal structure provides for the opportunity to cope with different problems in different areas by different means. In contrast, the Unitarian structure does not allow for such differentiation. The solutions of particular problems will always have to take into account the effects not only on neighboring regions, but also on the whole territory. Moreover, a federal structure does not necessarily allow for immediate and effective decision-making processes. Indeed, to guarantee the proper presentation and consideration of the involved actors, these processes and institutions are exposed to political influences and fighting. This is an age-old disease of the post-modern bureaucratic state. These varieties of political trench wars eventually occur in either state structure. Since a federally organized state is deemed more prone to it – due to the larger governmental bureaucracy and greater number of political layers – Weber's idea of a

strong and relatively centralized executive might provide the appropriate medication (Laufer/Münch 1997, 28; Weber 1895; 1917; 1919a; 1919b; 1985).

Even if a constitution provides a firm basis for a federal structure, it does not necessarily reflect and illustrate the reality. Moreover, the diverging and opposing forces within the political system and different groups of the society commonly provoke a development, which exposes the federal organization to an ambiguity between centrifugal and centripetal forces. This is eventually the result of the general idea and process of a federal state: *Unity in diversity*.

The attempts to integrate distinct forms and concepts of political, economic and social spheres – where the economic element proves to be the most successful so far – will have to gain momentum. The continuing process and essential necessity to achieve compromises let sway the pendulum continuously between rather centralized and decentralized activities among distinct layers of government. While the latter, the centrifugal forces, provide the constituting entities with wide authorities, the obvious result would be a heterogeneous and loose (and weak) assemblage of societies. The contrary case, if the centripetal forces prevail, will allow for a much more homogenous environment and a firm federal organized union of states (Schultze 1998).

As reality shows, there is a strong tendency among existing federal nation-states in favor of centripetal maneuvers. Above all, this results from the initial objectives of a state. Richard Musgrave identified three major tasks and reasons for the existence of the post-modern state: *Allocation* – to ensure the proper supply of public goods (i.e. infrastructure, etc.), since the private sector of the society does not necessarily produce efficiently – or altruistically enough – in these fields. Secondly, the *distribution* is

commonly a state's task (i.e. social security, etc.), to ensure the accomplishment of objectives of social cohesion and relative equality of living standards. And finally, the state is necessary for the *stabilization* of the economic, social, and hence political system. Allocation and distribution are preferably conducted on the lower level of the state layers. However, to ensure the social, political and economic cohesion, the highest state authority preferably carries out the stability function. It would hardly make sense to have, for example, two different legal systems in one state. Additionally, inner and outer security requires a high amount of resources (Musgrave 1969, 6). The inability of the constituting societies of any state to cope with these major tasks on their own shall compel them to co-ordinate and combine their respective resources (in political and economic terms).

Despite the restraints the national budgets are commonly confronted with, it is a pleasing method to shift responsibility to the superior institutions – an indicator for centripetal forces. Johannes Popitz thus once coined the term of the *gravity of the central budget* (see Popitz 1927). On the long run, however, this will lead to a case of *government overload* – a situation that subsequently seems to occur among federal nation-states (Schultze 1998).

Thus, the *vital nation-state* as an active player becomes a precondition for any attempts of federalization of Europe. Its cultural and democratic traditions make the nation-state indispensable. Accordingly, Joseph Fischer's approach in favor of a *European federation of nation-states* does not entail the desolation of the concept of the nation-state, but instead the nation-states' revitalization in favor of the European integration process. In the words of Fischer, even in Europe's finality there will be Brits,

Germans, Frenchmen, and Poles. The nation-state will most likely exist and acquire a much stronger role than today, while applying the principle of subsidiarity (Fischer 2000).

It must not be the intention to create a *European Levithan* among European citizens and the emerging European State when the European federation is established, since the individual nations do not cease to exist. Rather the opposite, the European federation will have to be concerned with and concentrate only on ultimately necessary deeds. The foundation of a European State – inevitably in a federal structure – will thus create a state, which ought to remain and act in a liberally reduced manner. All patterns to accumulate and accelerate more authority from the constituting societies – and hence the necessary resources – on the superior European institutions will undermine the fundamental purpose of this European federation.

This, finally, refers to the principle of subsidiarity, which is supposed to be adhered to in current European policies. In reinforcing the nation-states as the building blocks of a future European federation, the initial principle will have to gain much more momentum. In fact, the need to solve problems as close as possible to their origins should not necessarily confront the superior federal institutions. An acceleration of several of such local problems of considerable dimension – even with tendencies to spill over – may easily drain the resources of the superior institutions, while their relative distance could only result in inefficient countering measures. Thus, the nation-state is and remains the very precondition for any attempts of subsidiarity in a European context. Moreover, if a society is potentially able to cope with its problems, and it is not allowed to rely, for minor causes, on the assistance of the federal institutions, it may be assumed, that in an increasingly homogenous and borderless Europe citizens choose to

adjust to their respective living conditions to their needs. A process might then be predicted which Tiebout once described with the instructive image of *voting by feet* – with all its implications (drain in population and tax income, decrease of the need for presentation within the respective institutions, etc.) for the concerned entity, failing to cope with the particular problem (Tiebout 1956).

To recapitulate and to argue in favor for a federal organization of a European union of states, Albert Breton testified that "parliamentary government combined with federalism gives the citizens of a country a more effective set of institutions for reflecting their will, preferences and aspirations" (Breton 1987).

Structure of Power Relations & Checks and Balance

The actual quality of the European federation – whether it will evolve in a rather centralized federal structure or as a model of a confederation – shall not be further elaborated here. It is nonetheless worthwhile to distinguish between particular patterns of internal organization of any federal structure. Generally, theory discriminates between the combined or integrated system and the dividing system in federal organized states (Laufer/Münch 1997, 20-1).

The first describes an *intra-state federalism*, which could be characterized by the fact that competencies are not distributed among federal institutions according to particular policy fields or particular state objectives, but in distinct layers. The superior level of government is responsible to establish law and regulations, while the subordinated institutions are charged with enforcing the state authority. Tasks concerning the entirety of the union are kept on the upper level of the state

institutions, while the enforcement and other local objectives are left to the respective authorities of the nation-states.

On the contrary, the governments of the constituting entities are involved in the law and decision-making process of the federal state. This, however, may lead to an amalgamation of certain priorities regarding federal and state policies, since the subordinated governments are for this reason accountable to their sovereign in terms of domestic as well as federal policy-making and enforcement.

This type of federal organization implies the creation of a bi-cameral legislative to provide for representation and control of the constituting states within the federal structure, which should transform the set of formally independent policies of the respective entities into a more co-operative system.

In contrast, the *inter-state federalism* does not less rely on the cooperation among the particular subordinated entities. Yet, the duality of governmental institutions is not as intense as is inevitably the case in the earlier model. The layers of the state are much more interrelated and interdependent than in the combined system. In fact, authorities and competencies are predominantly distributed alongside the particular policy fields. In fact, the superior institutions are commonly intruding in local affairs to administrate. Since both levels are entitled to govern and sanction particular fields, the need to work cooperatively together diminishes.

Though, the principle of subsidiarity potentially is not adhered to in certain cases – as soon as the superior institutions accumulated too much authority on the concern field – considerations regarding the individual politician's re-election, which may be assumed, may render this process in a healthy competition. The representative – as he is perceived directly

responsible and accountable – will be directly evaluated through his sovereign, even for the deeds of the superior institutions

Apart from these considerations, the European dimension of the envisaged union of states strongly favors the initial *intra-state* approach, since it respects most of the prevailing facts of present day's Europe. Hence, the European federal institutions ought to be responsible – as well as accountable in a proper manner – to establish in close cooperation with the European nation-states norms and standards, which are to be implemented and enforced through the national institutions and bureaucracy.

Suitable forms of Representation and Legitimacy

The general structure of a European federation of states, as elaborated above, implies a strong desire and necessity for a proper form of representation. In accordance with the argumentation of Publius' Federalist Papers, a union of states in the size of a prospective European Union, in its cultural, social, economic and political heterogeneity, and despite the peculiarities of its constituting societies, it is necessary to provide both the entirety of the people and their respective nation-states, with an opportunity to gain influence and make particular issues and concerns heard on the superior level. Both the people and the nation-states' governments – in their respective weight and proportion – shall be free and enabled to determinate directly the political agenda of the union of states. Furthermore, as Publius raised the concerns, a correspondingly structured and divided form of representation will prevent from, or at least reduce, the attempts of particularly ill-minded groups among the respective institutions to pool votes for their individual purposes. Hence, a bi-cameral system of

representation – regardless of name and the as yet not discussed origin of these chambers – will provide the sole exclusive and feasible alternative in a European State to allow for this proper representation, while the concerned individuals and their nation-states should be able to restrain, influence and determine the code of conduct of the arising superior state authorities. In contrast, R.W.G Mackay, referring to British parliamentarian system, argued that the constituting nation-states' rights will be guaranteed through the federal constitution itself. Thus, the United States of Europe's legislative branch may be composed only of one chamber representing the people of Europe (1940, 148). Due to the fact that Mackay's ideas are in many aspects divert significantly from those proposals elaborated here, this paper shall not further refer to his work. Nonetheless, it is worth to bear also the existence of Mackay's *Draft Constitution of a United States of Europe* in mind (Mackay 1940).

This, however, refers to the continuously and constantly emerging concerns of most commentators of the integration process (Schmitter 2001; Weidenfeld 2001). In fact, the answer to the question of legitimization and legitimacy of the present European Union – while its legality could already be asserted today as was shown above – remains to be in vague and precarious spheres. Even the European Commission's White Paper on Governance identified and examined the implications of the lack of the European peoples' support, favoring the integration process despite the prevailing insufficient identification and association with the European idea for any further attempts in the European experiment (European Commission 2001). Turning the debate once more to Publius' concerns and propositions, a respectively structured set of representation in a European state will inevitably require a reinforced, active participation of all of the European people in the political process – due to the increased number of

subsequent elections (see Hamilton/Madison/Jay 1999). Accordingly, not only the representation, but in addition, the strengthened and essential political involvement of the individuals may result in an increased support, and hence perceived legitimacy of the European institutions. According to Siedentopp, this means something different than the procedure of the elections to the present day's European Parliament. Siedentopp points out that this particular mode, which produces directly elected deputies, is hardly more than a fig leaf, which does not succeed covering the oversized European body. The power and disproportional influence of the Commission's bureaucracy, though eventually balanced to some extent by the wheeling and dealings of the Council, is not through an indigenous legislative authority (Siedentopp 2002, 187). Nonetheless, the dedicated reader shall be aware that the theoretical concept of political participation, contribution and public codetermination of political process does not necessarily reflect reality. In this regard, Joseph Schumpeter provided a much more realistic approach taking into account the individual's rational considerations and the expected utility of any individual deeds (see Schumpeter 1999). These necessities, however, will lead the discussion towards the problem, where the representing chambers will have to be placed in a prospective state structure of a federal organized European union of states to secure and assure the necessary influence of both bodies, while simultaneously guaranteeing the proper balance of both chambers, but more so the interests of those represented.

3.2 Legislative and Executive Branch

Montesquieu pleaded for an appropriate system of checks and balances among the legislative, executive and judicial branch. Yet, Publius raised

concerns whether the legislative branch, which provides for the proper representation of those governed, may assume too much influence. Accordingly, the authors of the Federalist Papers – which shall provide the basis for further debate – suggested the factual division of the legislative branch in two chambers, which shall simultaneously guarantee the influence of the respective represented body within the decision-making processes of the superior state institutions. This is a precondition of any theory of separation of powers and the establishment of a system of checks and balances on a particular level of a state. Hence, further obeying Publius arguments, legislative power shall exclusively lie in the hands of the bi-cameral set of representing institutions.

If Hamilton, Madison and Jay were right in their rather pessimistic view on human nature – and Weber's assumption, that the tendency of particular groups in the representing bodies to follow rather their individual interests than those of their sovereign, is additionally taken in consideration – then it may be assumed that the multitude of interest of particular groups and factions among both chambers of the legislation will level and neutralize the extreme ones. Accordingly, the outflow of this continuous struggle and the result of these countering efforts between the varieties of interests may consequently result in a balance of interests and shall level the most extreme exaggerations, while the only prevailing outcome could be conceived to advocate the common good. The results of this process might be perceived as the compliance to Rousseau's request in regard that the state's institutions shall adhere solely to the *general will* of its people.

The potential for substantial deadlock and the ensuing susceptibility within such a legislative system could be greater. Weber anticipated malicious tendencies among small groups within the representation, which could only be countered and counterbalanced through the establishment of

a firm presidential system. To guarantee a proper separation of powers among state institutions – and following Montesquieu's idea of a set of balanced powers – both representing bodies shall be the only source of legislation on the superior state level. Any such determined constitutional provisions have to take in consideration what the authors of the Federalist Papers predicted regarding the nature of men. In particular, the legislative chambers in a combined manner – as the representative of the sovereigns and constituting societies' will – shall be endowed with appropriated means to control and, if necessary, to restrain excessive abuse of the executive authorities of the head of the *European* state.

The executive branch, on the contrary, shall entail a broad set of competencies to provide for an efficient policy-making, but more powers regarding the policy-implementing process. To make once more the voice of the authors of the Federalist Papers and their *oracle* heard: "From these facts, by which Montesquieu was guided, it may clearly be inferred that in saying 'There can be no liberty where legislative and executive powers are united in the same person, or body or magistrate,' or 'if the power of judging be not separated from the legislative and executive powers,' he did not mean that these departments [branches] ought to have no *partial agency* in, or no *control* over, the acts of each other. His meaning, as his own words import, and still more conclusively as illustrated by the example in his eye, can amount to no more than this, that where the *whole* power of one department is exercised by the same hands, which possess the *whole* power of another department, the fundamental principles of free constitution are subverted" (Hamilton/Madison/Jay 1999, № 47, 270-1).

The general application of a presidential system will lead to the admired, relative independence of the executive branch from the legislator. In fact, both branches will have to be assembled through distinct elections.

Moreover, since the figure of a head of the executive is not becoming a member of the legislator, the executive may not determine any (personnel) decision to endow the executive's bureaucracy.

Yet, to maintain Montesquieu's balanced powers, the legislative body shall be entitled to intervene in any case of perilous developments within the executive. To guarantee the proper application of the union's legislation, a veto in legislative acts may or may not be conferred to the executive. The presidential character of the European State shall not allow for disciplining the legislative branch by other than the veto right. Since the executive is not depended on the majority within the legislative branch, the former may or may not degenerate to a servant of the sovereign, as it is not entangled in political and parliamentary considerations. This probably best assures the adherence to Rousseau's idea of an articulated and attained *general will* of the sovereign.

Complying with the preferable *intra-state federalism*, the executive branch of the superior state authority is rendered widely to a pure administration, obeying the principle of subsidiarity. In particular, the executive authority of the federal state has solely to govern and to administrate the proper adherence of established standards within the federation among all constituting societies to guarantee stable and coherent living conditions. Despite the fact that each entity retains its own governmental institutions, the implementation of particular measures will have to be left to the respective authorities on the subordinated level.

Simultaneously, the superior executive branch has to put more efforts in securing the state against internal and external threats. Accordingly, measures deemed necessary to be taken in the spheres of foreign and security policy, but also those which aim to accomplish a coherent set of

conditions and common standards – hence, all affairs which tend to affect the entirety of the union of states – ought to be administrated by the executive branch, after having been legislated by the respective branch among the superior institutions (Laufer/Münch 1997, 20). Inevitable, the most powerful means to guide the constituting entities will emerge in form of the legislative budgetary contributions.

It could be assumed that there does and did not exist a state with such a clear and distinct separation of conferred authority upon one policy field or another. The post-modern world urges federal and Unitarian states alike to accelerate its political procedures (Hübner 2001, 45-6). This commonly seems to result in an accumulation and centralization of competencies and authorities on particular bodies, while potentially infringing both, the traditional separation of powers as well as, in a federal state, the principle of subsidiarity.

Since this book focuses on creating Europe from the sketch, the dedicated reader may excuse the intention for a rather idealistic approach. Hence, it would benefit both the perceived legitimacy of the European State and its workability to establish a catalogue of competencies. This would exclusively confer one set of competencies to subordinated entities and others to the higher authorities (Leinen 2001, 65). Ideally, this may be accomplished by a respectively drafted constitution. Apart from this, it may also be inherited from the constituting societies through strong traditions of the idea of subsidiarity.

The European Convention attempted to catalogue various policy fields with the purpose to confer them under the authority of a common European authority. However, notions of re-nationalization of some fields within the European Union may alert the protagonists of an intensified integration.

Yet, this could provide the present EU institutions relief from their current inconveniences by concentrating resources and efforts on fundamental challenges. Simultaneously, this process of re-focusing on the initial objectives may, on the long run, lead to a strengthening of the superior federal bodies.

Current Status in EU's Structure

The current structure of the EU in regard to its legislative and executive authorities and bodies may be described as powers and competencies of the Commission are laid down in Article 211 TEC. Accordingly, the Commission shall "ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied; formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary; have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty". In accordance with that Jo Shaw structures the Commission's activities in four main dimension of action, namely "the formulation of policy; the execution and administration of policy; the representation of the interests of the EU; the guardianship of the Treaties" (2000, 117).

The bare reading of the referred Article – according to Craig/Búrga – does not reflect the significant role of the Commission in the policy making process. On the other side, a strict and democratic separation of powers does not characterize the bureaucracy of this body. The Commission has an array of powers, which are legislative, administrative, executive, and judicial in nature. Its most important purpose is devoted, above all, to

initiate the legislative procedures, though all legislative proposals have to be approved by the Council and often by the Parliament.

Through the right/competence to initiate acts, the Commission acquired the role of the motor of integration of the EU. The Commission makes proposals for actions and exercises delegated powers from the Council (Craig/Búrga 1998, 54; see also Müller-Graf 1999). It is also responsible for drafting the budget, which determines the future allocation of resources as well as the prospective fields of activities. With the budget, wide areas of policy-making are covered. This goes, indeed, far beyond decisions the Commission being limited by the Treaties, may take within its powers or competencies. However, the Commission's right of initiative, in relation to most legislative proposal, remains the sole but most powerful weapon in shaping policy outcomes (Shaw 2000, 293).

Despite the Council's relative importance in the decision and law making process, the national influence and the maintenance of national interests and domains concerning EU legislative acts is secured. Although, this influence could be diluted due to increasing centrifugal forces in the body itself, reflecting contrary national attitudes towards to future of the European integration.

Since 1989, the rotating Presidencies must define their programs before the Commission and the Parliament, which ought to provide for a coherent policy-making of the Community as such. Craig/Búrga identify a kind of self limiting restraint within the intergovernmental structure, which might guarantee the progress in integration matters: "If a country tries to use its Presidency to achieve goals which are felt not to accord with the majority sentiment in the Council, and which are too narrowly nationalistic, then the criticism is likely to be particularly harsh" (1998, 58-9).

Though its composition is fragmented – which does not always allow for coherent policy-making – the Council has the last influence in the policy-making process. Article 202 TEC provides the body with extensive powers concerning the EC. Article 202 par. 4 TEC provides the Council with the competence to "confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right … to exercise directly implementing powers itself". A contradiction of the Council in its role of representatives of the Member States may occur in order to ensure the "co-ordination of the general economic policies", serving the supranational integrity (Shaw 2000, 126).

The Council will have to vote its approval of Commission legislative initiatives before they become laws. The ability to delegate power to the Commission is widely perceived in accordance to leave the necessary decision in a particular area to the Commission. Thus, both bodies participate in the policy-making process, and fill the gap between the aim of applied measures and the reality.

It would be misleading to understand the co-existence and collaboration of the two bodies as perfect harmony. Craig/Búrga hold that there "have been real tensions between the federal pro-integration perspective of the Commission, and the more cautious, intergovernmental perspective of the Council" (1998, 60-2). However, where certain issues exceed the competencies of the EC, the Council provides the forum for the intergovernmental bargaining procedure (Shaw 2000, 129). Article 208 TEC allows the Council to request the Commission – as initiator of all legislative acts – to submit proposals on what are, in effect, detailed

legislative initiatives, which the Council wishes to see enacted (Craig/Búrga 1998, 150).

The Parliament's biggest influence, beside its role in the particular co-decision/cooperation procedures, lies in its co-budgetary authority (Articles 272-273 TEC). Though, in regard to expenditures, the Commission is only accountable to the Parliament, the latter is only allowed to adopt or made slight amendments to the budget. The draft of the budget is left to other bodies than the Parliament. Therefore it is one of the constant complaints that there is no formal institutional parallelism between the revenue and the expenditure sides of the EU finances (Shaw 2000, 283).

The Commission's accountability to the Parliament is considered to be its second weapon within the political framework of the EU. As Craig/Búrga argue, one of the reasons the Parliament and the Commission are generally considered as allies, apart from their inherent pro-integration/federalist/supranational attitude, is the common opponent of the Council, which, according to the Treaties, neither may control.

According to Article 232 par. 1 TEC, the Parliament becomes increasingly active as a litigant, probably to counterbalance or reinforce its comparable minor influence in EU's legislative matters (Craig/Búrga 1998, 72-4). Correspondingly, as Shaw holds, the disputes over the finances of the EU proved to be the battle ground of intense political, rather than legal, conflicts, which have mirrored the overall debates about the path of the European integration process (2000, 280).

It is thus hard to oppose Helen Wallace's observation that all European institutions – whether initially created by the Treaties or not – shall not be considered existing in a political or economic vacuum (Wallace H 2000a,

6). Though the apparently homogenous first pillar of the Commission provides in its supranational structure a fertile base for further attempts towards a deeper integration, most political actions taken by the Community depend upon the good-will of the intergovernmental Council.

In actuality, the EU's Member States are the driving forces behind the integration process. Yet, touching not obviously beneficial subjects outside the economic sphere often reduce the respective commitment of the particular Member States to a minimum.

Since – as Peterson put it – the steps taken from Maastricht and Amsterdam Treaties to the amendments of the Nice Treaty can hardly be perceived as history-making (1995), Curtin's statement still illustrates some concerns of the current status of European integration: "The result … is an umbrella Union threatening to lead to constitutional chaos; the potential victims are the cohesiveness and the unity and the concomitant power of a legal system painstakingly constructed over the course of some 30 odd years … And, of course, it does contain some elements of real *progress* … but a *process* of integration, if it has any meaning at all, implies that you can't take one step forward and two steps backwards at the same time. Built into the principle of an 'ever closer union among the peoples of Europe' is the notion that integration should only be one way" (Curtin 1993, 67).

This, correspondingly, refers to Helen Wallace's intention to characterize even the prevailing state of intergovernmentalism among the EU institutions and its policies by the notion of 'transgovernmental'. This means, "where EU member governments have been prepared cumulatively to commit themselves to rather extensive engagement and disciplines, but have judged the full EU institutional framework to inappropriate or unacceptable" (Wallace H 2000a, 33).

The surfacing question is thus whether EU Member States are willingly struggling to achieve the envisaged status of European integration – or whether some players only pretend to do so, while confidentially pulling the strings given them on hand to manifest their actual and sole national interests on the stages of European institutions?

Helen Wallace argues "cooperation is often a means to manage differences, rather than an instrument of convergence. It is this combination that brings much of the dynamic to policy-making across borders in western Europe, a dynamic that can intensify cooperation, but which also can interrupt it". To characterize the policy-making process of the EU, the same author introduces the metaphor of a pendulum. Accordingly, the policy pendulum swings between the Member States' areas of national politics and interests and the integrated European pole. The relative gravity of these poles varies across the particular policy domains, attracting some forces to allocate the measures of the policy-making process either on a national or on the EU level, while other policy areas let the pendulum sway in uncertainty (Wallace H 2000b, 41). Given that a pendulum may oscillate in chaotic patterns, this metaphor may illustrate the different intentions at the EU and Member State's level, which shape the initial policy-making process throughout the EU bodies and institutions.

EU Members first accomplished the reconciliation, then to adapt, and later the integration of their economic spheres. Article 2 TEC provides for an "economic and social cohesion and solidarity among Member States". However, after half a century, the European Union is still predominately an economic exercise. Admittedly, easier to accomplish and obviously directly beneficial, the Member States constituting the present EU transferred some characteristics of their national sovereignty to the Community only with the

Treaty of Maastricht. Other fundamental attributes of national sovereignty were not or only were limited and hesitatingly conferred to intergovernmental – and hence nationally determined – bodies of the Community. As a result, Article 11 (2) TEU provides regarding the critical Common Foreign and Security Policy that the "Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity".

Obviously, the lack of a politically integrated apparatus may diminish the role of the Community, though economically integrated. In contrast, Helmut Kohl, former chancellor of Germany and one of the initiators of the European currency, ascertains that the process of integration became irreversible after introducing the Euro currency. Though currently limited to a number of Member States of the EU, the "European experiment" attained a remarkable new dimension. Spectators, – in the words of Kohl – passing the streets and places of Kraków, Prague or Budapest, may notice and experience the European spirit there as well. Europe shall accordingly not be limited to its today's proportions. The historical and moral – as well as rational – obligation of the EU therefore has to be the accession and fast integration of the so-called Candidate Countries in the earliest possible occasion (Kohl 2001).

This, however, implies the Union's ability – and will – to cope with its own process of deepening and widening. During the IGC of Nice, European statesmen tried to negotiate a somehow reformed structure able to adopt an enlarged Union. The Treaty of Nice might provide the future EU with means in the spirit of Maastricht and Amsterdam – but not more than that. In fact, the problems associated with the ratification of this treaty made the problems evident, which the European idea is facing today. Proclaiming to be a revolutionary step forward, the amendments of the

Nice Treaty in effect barely "continue the process of creating an ever closer union among the peoples of Europe" (Preamble of the Treaty on the European Union). During the debate in the French Parliament, regarding the ratification of the Nice Treaty, Giscard d'Estaing – who became chairman of the European Convention – contested his government's efforts to defend the results of the Nice Treaty while the French Presidency simultaneously sought refuge in a future IGC, when the ability to reform the enlarged Union will have shrank to a minimum (Giscard d'Estaing 2001).

The institutional setting of the EU had evolved to an issue of the Nice Treaty. Nonetheless, concerning rather long term considerations, this Treaty – apart from the provisions for the current phase of enlargement – hardly provides the necessary structure to cope with any problems the EU will face, regardless of external or internal origin. The newly created possibility for enhanced co-operation among a limited number of Member States – though eager to maintain the Union's identity as a coherent player in international affairs (Article 27a Treaty of Nice) – may even contribute to undermine further the fragile relation of the supranational vs. intergovernmental structure.

The lack of rationality among both, the institutional and the Member States-EU relations, processes and behaviors thus provoke William Wallace to describe the EU in its present shape as a "*relative stable provisorum*" (Wallace W 2000, 532). This construction's resources, but not its capabilities and structure deem to be able to cope with future internal and external challenges. Even a sustaining regulation of the harmonized co-existence through the Treaties, its Member States and the Community bodies, could in fact not be achieved (Stein 2001, 49).

Nonetheless, Kühnhardt affirms that whenever Europe had an idea of itself, the continent flourished. Comprehensively reiterating Europe's history, it may be surprising that the concept of Roman Empire ought to be replaced by the European Union, which is founded one four or five basic treaties, eight protocols and 34 declarations, without establishing a clear relationship between national sovereignty and European identity. Some critics indicate that Europe became a superpower without comprising an inherent mission or a "*Staatsidee*" (1999, 14, 17).

Jo Leinen alleges that the European Union ultimately will suffer a defeat regarding its legitimacy if it does not establish more democratically determined mechanisms. The best way to achieve this would be a redistribution of powers through a European constitution (2001, 61).

Larry Siedentopp, finally, argues that the reduction to sole economic considerations seem to dominate the discussion among politicians of future integration endeavors. From this perspective, the European Union, which initially was inspired by liberal democratic principals, increasingly proceeds on the basis of more Marxist assumptions (2002, 51).

It could thus be assumed, and was subsequently articulated by both various commentators and EU officials, that the current institutional framework of the European Union does anything but provide a firm and definite separation of powers and spheres of interests. It could follow that EU legislative acts appear obscure, impenetrable and precarious because of resentments and antagonism among wide ranges of Europe's citizens. There is no sole institutional provision, which may guarantee a proper establishment of any legislative act; instead there prevails a colossal and chaotic fusion of legislative and executive powers among several institutions. Legislation in present EU structures remains imbedded in a

vague institutional patchwork, which provides the ground for substantial inefficiencies and a lack of accountability. The desire for increased democratization of any EU deed is rendered irrelevant as long as the well-conceived general structure of interlocking – and interblocking – institutions is not considerably changed towards a much clearer approach regarding the separation of powers, competencies and responsibilities.

Alternatives towards a Federalization

Considering the limited abilities which the contemporary European Union institutions and policies were facing in recent years, many attempts have been made to improve these worrisome and obvious situations; hence to prepare Europe to cope with future challenges approaching already on the horizon.

Current efforts to reform the EU institutions, while not to interfere too much in the general and nationally dominated structure, are discussed subsequently. Kühnhardt argues that it "seems to be unrealistic to assume that in its current state, the progression of doing business in the EU would remain anything other than gradual. It might be facilitated, if necessary, by 'reinforced cooperation', i.e. an avant-garde concept which enables further steps toward integration without waiting for the last skeptics in the chain" (2001, 9). However, as Leinen put it, 'this could become Europe's best century, if its Member States would decide to band together closer. Only with united efforts the approaching challenges, such as the maintenance of internal and external peace, social security, unemployment, etc., could be secured' (2001, 66).

In recent times, a number of more ambitious ideas have been revealed by European statesmen, politicians, and scholars, or – as Hartmut Marhold put it – the *crème de la crème* of Europe's political elite. Some of the variety of speeches, drafts and plans shall be discussed subsequently. Among the contributions, five dominating motives for the proclamation of these distinct blueprints of a future Europe may be identified. First, the decline of the European Union institutions' and bodies' workability and the origins of these obstacles urge distinguished European statesmen to put forward their ideas to provide for sustainable and durable solutions. This, secondly, relates to predictable problems in the course of the immediate EU enlargement. The prevailing question remains to be not solely whether the aspiring countries are prepared, but also whether the EU itself is willing, eager and able for this step. Thirdly, the historically unprecedented inauguration and meanwhile visible establishment of a common and shared currency and a common monetary policy eventually provokes a disruption among the present EU membership. In fact, the highly integrated EMU area is not accompanied by other vitally important policy fields, which should be respectively incorporated. There is one monetary authority but not a common economy or finance authority in its wake. To put it in the words of Fischer: 'The common currency's establishment is not primarily an economic, but above all a sovereign and utmost political endeavor' (Fischer 1999). This refers to the forth point of concern: globalization. Admittedly, the notion of globalization subsequently surfaces as an increasingly fashionable term for the explanation of any inconvenient developments in our post-modern world. Simultaneously, globalization, in the magnitude of its facets, is the challenge that the European Union, as a deeply integrated system of economies but less so as an organization of states, is trying to cope with in these days. Finally, the fifth motive for European politicians'

attempts to fundamentally improve and eventually restructure the European institutions are concerns regarding the perceived deficits in its legitimization and degree of democratization (Marhold 2001, 9-15).

All proposals tend to oscillate between the attempts to establish reforms within the Treaties and attempts to revise the Treaties in favor of a conscious re-foundation of Europe. Among the contributions the plea in favor of a distinctly changed status of the EU institutions and bodies in the future prevails. Two general approaches could be identified in the debate.

Among the contributors the alleged *Community method* or *Method Monnet* is heavily contested. It is a matter of concern whether the future challenges could be opposed through the present method of gradual, but tolerable, steps of minor integration, or if a rather revolutionary approach necessary to surmount once and for all times these obstacles for Europe's future progress and prosperity through a firm and durable structure, hence the state formation of Europe.

Another major obstruction, which determines the debate, is the question whether particular states – and which states – shall inaugurate an accessible core, an avant-garde, or a gravity center. This matter, on the contrary, is rendered increasingly irrelevant due to the existing differentiation within the present EU in the course of the European Monetary Union and the Euro currency (Marhold 2001, 21-2).

The whole debate, however, does inevitably illuminate the actual challenge of current EU patters: The question is whether Europe is at the brink of *making or breaking the union*.

At least the latter considerations must not affect this book's intention, since the basic timeline and the attached arguments deal with a rather distant future as made apparent in the first chapter. Regardless of these future peculiarities, the debate is and must be held in our days. Thus,

this contribution is not focusing on sole reforms. Instead, the dedicated reader may assume that merely the degree and particular organization of a fundamentally rewritten and reinvented Europe ought to be structured.

The speech, which – after a considerable period of sole attempts for trivial reforms – probably ignited a fundamentally new debate on the future of the European experiment were the remarks made by Joseph Fischer and his pleas for a federal organization of future Europe as the only feasible alternative for the successful continuation of the integration experiment. Fischer's annotations to the present status of the European integration appreciate the nearly revolutionary approach, which Robert Schuman and Jean Monnet once took. Correspondingly, by acknowledging their achievements, Fischer urges for the "completion of Robert Schuman's great idea of a European federation", hence the "transformation from a union of states ["*Staatenverbund*"] to full parliamentarisation as a European Federation, something Robert Schuman demanded 50 years ago. And that means nothing less than a European Parliament and a European government which really do exercise legislative and executive power within the Federation" (Fischer 2000, 25-30).

Fischer conceives the notion of parliamentarisation as the advancement and evolution of the European Parliament towards a bi-cameral legislative institution, whose elected members would simultaneously be deputies to their respective national parliaments. In this model the second chamber shall be constituted from representatives of the comprising societies' governments. It is not further elaborated whether either chamber shall be constituted by a certain number of deputies or if the represented population should be considered respectively. The future Europe of Fischer will consist of a directly elected president, whose

government should originate either from the present day's Council or alternatively from the Commission. This federation will inevitably have to be constituted from strong and eventually reinforced nation-states. Fischer is eager to emphasize the role of the nation-state within its European federation, whose continued existence is non-negotiable to most of the constituting societies of the future Europe: "Even when European finality is attained, we will still be British or German, French or Polish. The nation-states will continue to exist and, at European level, they will retain much larger role" (Fischer 2000, 27).

Correspondingly, a clear allocation of competencies is apparently a necessity already in the present status of European integration. Inevitably, it will materialize in a much worse manner after the process of state formation of Europe has been inaugurated. Hence, there "should be a clear definition of competencies of the Union and the nation-states respectively in a European constituent treaty, with core sovereignties and matters which absolutely have to be regulated at European level being the domain of the Federation, whereas everything else would remain the responsibility of the nation-states. This would be a lean European Federation, but one capable of action, fully sovereign, yet based on self-confident nation-states, and it would also be a Union which the citizens could understand, because it would have made good its shortfall on democracy" (Fischer 2000, 26).

Marhold ascertains that Fischer's federation of nation-states does not revive Schuman's heritage, but resumes its achievements and continues the integration experiment in similar revolutionary steps. *'Like Schuman'* is not any longer the motto, but *'as revolutionary as Schuman'* (Marhold 2001, 27).

Though Fischer's proposals do not provide an entirely coherent concept for a future European State, they provoked critical remarks among European politicians and predominantly positive comments among European academics. Fischer claims: "For me it is entirely clear that Europe will only be able to play its role in global economic and political competition if we move forward courageously. The problems of the 21st century cannot be solved with the fears and formulae of the 19th and 20th centuries". Moreover, "it would be an irreparable mistake in the construction of Europe if one were to try to complete political integration against the existing national institutions and traditions rather than by involving them. Any such endeavor would be doomed to failure by the historical and cultural environment in Europe. Only if European integration takes the nation-states along with it into a Federation, only if their institutions are not devalued or even made to disappear, will such a project be workable despite all the huge difficulties. In other words, the existing concept of a federal European state replacing the old nation-states and their democracies as the new sovereign shows itself to be an artificial construct which ignores the established realities in Europe. The completion of European integration can only be successfully conceived if it is done on the basis of a division of sovereignty between Europe and the nation-state. Precisely this is the idea underlying the concept of 'subsidiarity', a subject that currently being discussed by everyone and understood by virtually no one" (Fischer 2000, 25).

The conception of division of sovereignty, which is articulated by Fischer, provides for anything but the genuine concept of Montesquieu's separation of powers and its progression and adaptation on bigger territorial states, as elaborated through the authors of the Federalist Papers. While elaborating present day challenges, Fischer, unwillingly or not, refers to

these 18th century state theories. There is no causality originating from these theories and ideas to leave their respective imprint on the future European State structure. As elaborated by Fischer's speech, it is rather the opposite argumentation. The obvious challenges indeed urge for the establishment of an institutional framework, which firstly requires or implies a firm state structure and only secondly shows some commonality and parallels with particularly elaborated lines of the argumentation of old thinkers.

Fischer, being aware of given realities, continues to elaborate on his ideas to cope with present and future obstacles in the integration process: "In my opinion, this can be done 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 decision will have to be made between the Senate model, with directly elected senators from the Member States, and a chamber of states … Similarly, there are two options for the European executive, or government. Either one can decide in favor of developing the European Council into a European government, i.e., the European government is formed from the national governments, or – taking the existing Commission structure as a starting-point – one can opt for the direct election of a president with far-reaching executive powers" (Fischer 2000, 26).

In any circumstances, Fischer's fundamental argument in favor of establishing a distinctively structured European union of states reads if "the alternative for the EU in the face of the irrefutable challenge posed … is indeed either erosion or integration, and if clinging to a federation of states would mean standstill with all its negative repercussions, then under

pressure from conditions and the crises provoked by them, the EU will at some time … be confronted with this alternative … For it would be historically absurd and utterly stupid if Europe, at the very time is at long last reunited, were to be divided once again" (Fischer 2000, 28-9).

Jacques Delors, in contrast, advocates a European re-unification, as the dominant historic objective, solely through a renewal of the Treaties' institution. The establishment of renewed European structures is not deemed inevitable: "The title European Union is perfectly appropriate since it is a question of uniting peoples while respecting the Nation States, reaping the benefits of free trade and cooperation and supporting each other's efforts thanks to the added value of common policies. The renewed institutions of the Treaty of Rome would be able to manage this great ensemble" (Delors 1999, 170).

Delors' strong belief in the current EU's institutions' ability – the institutional triangle, constituted by the Parliament, Commission and Council, and enshrined through the bi-annual European Council Summits and the effort of the ECJ – to adapt to and cope with emerging challenges are conceivable in respect of his former position as a Commission's President, who left a significant imprint in the European integration. Yet, Delors is realist enough to raise some doubts concerning theorists' gullibility regarding further progress in the integration: "I do not believe either in the virtues of the so-called ratchet theory according to which political progress emerges as if by magic from economic integration. I have therefore never believed that the Economic and Monetary Union … serve as a springboard for political union" (Delors 1999, 166). In another speech, Delors refers to the origins of the experiment of European integration supporting his rather moderate but sustaining approach towards further

integration progress by advocating Robert Schuman's initial thoughts: 'The hard lessons history taught me – a man, crossing boundaries, that I am – to be wary of the hasty improvisations, of the too ambitious projects, but it also taught me that, when an objective judgment, maturely reflected, based on the reality of the facts and the higher interest of the men, it is important to firmly hold on to persist' (see Delors 2000, 187).

Delors argues in favor of preservation and recalling of the initial ECSC or EC/EU's power structure as the foundation of the integration process. The institutional settings to initiate legislation with its two legislative powers – the Parliament and the Council –, its two executive authorities – the Council and the Commission –, and the sole judicial pillar in form of the ECJ, whereas the Commission has been conferred the exclusive initiative right, shall also provide the accepted, sustaining and reliable structure for Europe's future. In the words of Delors: 'John Monnet said of him: Only the institutions become wiser: they accumulate the collective experience and, through this experience and this wisdom, men – subject to the same rules – will see not their nature to change, but their behavior gradually to transform itself' (Delors 2000, 190).

For Marhold, Delors' argumentation is based on the belief in the three basic principles, which determine Europe's development; competition, cooperation and solidarity. Accordingly, these inherent ties, among all European peoples, to common aims and objectives and the established and peculiar competencies of EU institutions just establish a quasi-federation of nation-states. Delors' rather reserved position in the *new Europe debate*, or better the *debate on a new Europe*, does not create a new vision of Europe, but in contrast, focuses on the reform of the existing institutions. Delors thus qualifies himself as a mechanic to repair the existing EU framework (Marhold 2001, 156).

Delors' blueprint could be conceived as a constructive contribution concerning the immediate necessity to provide for the institutions' workability in a rather short perspective. Correspondingly, this is reiterated by Jacques Chirac, who elaborated his views on the future Europe in a speech in front of the German parliament: 'In my opinion, it is necessary to elucidate the patterns of the Union'. And: 'Neither Germans nor Frenchmen want a European super state, which would replace our indigenous nation-states and thus eradicate them as actors from the stage of international policy' (Chirac 2000, 288).

Chirac's contribution to the European debate ought to be acknowledged and appreciated due to his elaboration of a crucial bone of contention: Sovereignty. Firstly, the European nation-states execute a part of their sovereignty in shared a manner. Secondly, there could be assumed patterns of common sovereignty, which are to a certain extent visible in already federalized EU policy fields. Accordingly, the EU exercises its own limited sovereign rights, which are distinguishable from national approaches. Thirdly, there is a set of shared, common sovereign*ties* among the particular policy fields of the EU. Fourthly and finally, the peoples will remain Europe's sovereigns.

In the cause of institutional *reforms* of the EU the four fundamental qualities of sovereignty in Europe should be reinforced and maintained in a sophisticated manner (Marhold 2001, 281). Chirac does not further elaborate upon how these matters of individual and particular national concern ought to be realized. The importance and role of the constituting nation-states for any further endeavors in European integration is emphasized and illustrated by Chirac in the equality he treats the nation-states and Europe: "*Vive l'Allemagne! Vive la France! Et vive l'Union*

européenne" (Chirac 2000, 294). Nonetheless, some critics reveal with this speech at least a partial withdraw of France from its constructive role in and for Europe (Müller-Brandeck-Bocquet 2001).

Considering Europe's approaching challenges, the majority of recent proposals remain indefinite and negligible – from those of Delors, over Chirac, to Solana's proposition to reform the Council procedures (Council of the European Union 2002), whereas the EP (European Parliament 2002) at least contributed a remarkable outline of future division of competencies between the EU and its constituting Member States. Apart from a few details, these rather nebulous and lesser fundamental proposals do not abolish the co-legislative and co-executive rights and interfering authorities upon EU institutions.

Only Tony Blair, in cooperation with José-Maria Aznar, brought forward a peculiarly British postured proposal with roughly equal revolutionary patterns as Fischer did. Both illuminate the necessity to tread new paths: "The Europe of peace and prosperity … is coming of age. … But we will all need to adapt as Europe becomes increasingly open and diverse" (Blair/Aznar 2000).

Blair acknowledges that the EU is predominantly an economic union, which is the United Kingdom's foremost reason to refrain from old-fashioned and old-mined principles and to participate in the integration experiment (Blair 2000, 244). But at the same time: "Europe is about more than economics. It is based on shared values of liberty, democracy, tolerance and social justice" (Blair/Aznar 2000, 237).

In his Warsaw speech, Blair elaborates his long-term considerations regarding the shape of Europe's future institutional setting. In his capacity

as Prime Minister, he does not completely depart from the British position when he deems a written constitution for a future Europe unnecessary. Other details of the speech reveal other, more progressive aspects. Fortunately, Blair chooses to speak frankly about his intentions towards a future Europe: "We need a strong Commission able to act independently, with its power of initiative: first because that protects smaller states; and also because it allows Europe to overcome purely sectional interests. All governments from time to time … find the Commission's power inconvenient but, for example, the single market could never be completed without it. The European Parliament is a vital part of the checks and balances of the EU. The Commission and the Council have different but complementary roles. The need for institutional change does not derive either from a fear that Europe is immobile or that it is time to upset the delicate balance between Commission and governments; it derives from a more fundamental question … There will be more of us in the future, trying to do more" (Blair 2000, 245-6).

Blair continues while raising the two alternatives, which Europe is confronted with. With priority to predominately economic considerations, the future Europe could either degenerate into a weak association solely affiliated through free trade arrangements, or – as the British Prime Minister put it – a "classic federalist model, in which Europe elects its Commission President and the European Parliament becomes the true legislative European body and Europe's principal democratic check. The difficulty with the first is that it nowhere near answers what our citizens expect from Europe, besides being wholly unrealistic politically. In a Europe with a single market and single currency, there will inevitably be a need for closer economic co-ordination. In negotiations over world trade and global finance, Europe is stronger if it speaks with one voice … In

foreign and security policy, though nations will guard jealously their own national interests, there are times when it will be of clear benefit to all that Europe acts and speaks together. What people want from Europe is more than just free trade. They want: prosperity, security and strength".

And Blair put it quite honestly: "Europe's citizens need Europe to be strong and united. They need it to be a power in the world. Whatever its origin, Europe today is no longer just about peace. It is about projecting collective power … a limited vision of Europe does not remotely answer the modern demands people place on Europe" (Blair 2000, 246-7).

Inevitable, Blair reveals his preferences concerning the nature and inherent structure of his envisioned federal model he would like to see to be applied: "We can spend hours on end, trying to devise a perfect form of European democracy and get nowhere. The truth is, the primary sources of democratic accountability in Europe are the directly elected and representative institutions of the nations of Europe - national parliaments and governments … Europe is a Europe of free, independent sovereign nations who choose to pool that sovereignty in pursuit of their own interests and the common good, achieving more together than we can achieve alone … Such a Europe can, in its economic and political strength, be a superpower; a superpower, but not a super state" (Blair 2000, 247).

Blair continues to elaborate the particular changes inevitably needed to prepare and endow the future Europe with the appropriate means and structure for its approaching challenges: "The European Council, bringing together all the Heads of Government, is the final court of appeal from other Councils of Ministers unable to reconcile national differences … But the European Council should above all be the body which sets the agenda of the Union. Indeed … that is the task given to it … The President of the Commission is a member of the European Council, and would play his full

part in drawing up the agenda. He would then bring a proposal for Heads of Government to debate, modify and endorse. It would be a clear legislative, as well as political, program setting the workload of individual Councils. The Commission's independence as guardians of the treaty would be unchanged. And the Commission would still bring forward additional proposals where its role as guardian of those treaties so required. But we would have clear political direction, a program and a timetable by which all the institutions would be guided. We should be open too to reforming the way individual Councils work, perhaps through team presidencies that give the leadership of the Council greater continuity and weight; greater use of elected chairs of Councils and their working groups; and ensuring that the Secretary-General of the Council … can play his full role in the development of foreign and defense policy. For example, when Europe is more than 25 members, can we seriously believe that a country will hold the Presidency only every 12 or 13 years? But two or three countries together, with a mix of large and small states, might make greater sense. In future we may also need a better way of overseeing and monitoring the Union's program than the three monthly European Councils" (Blair 2000, 249-50).

Moreover, Blair argues: "What I think is both desirable and realistic is to draw up a statement of the principles according to which we should decide what is best done at the European level and what should be done at the national level, a kind of charter of competences. This would allow countries too, to define clearly what is then done at a regional level. This Statement of Principles would be a political, not a legal document".

According to Blair the latter objective ought to be accomplished by a body, whose agenda extensively "involve[s] representatives of national parliaments … by creating a second chamber of the European Parliament.

A second chamber's most important function would be to review the EU's work, in the light of this agreed Statement of Principles. It would not get involved in the day-to-day negotiation of legislation - that is properly the role of the existing European Parliament. Rather, its task would be to help implement the agreed statement of principles; so that we do what we need to do at a European level but also so that we devolve power downwards … This would be political review by a body of democratically elected politicians. It would be dynamic rather than static, allowing for change in the application of these principles without elaborate legal revisions every time. Such a second chamber could also, I believe, help provide democratic oversight at a European level of the common foreign and security policy" (Blair 2000, 250-1).

Thus, this chapter could hardly be better concluded than by reiterating quotes from Fischer and Blair, the most essential contributors to the debate over the new Europe. Blair said: "We need to get the political foundations of the European Union right. These foundations are rooted in the democratic nation state. Efficiency and democracy go together". Fischer concluded his speech with the words: "This could be the way ahead!" (Blair 2000, 252; Fischer 2000, 30).

4. The European State reviewed

In the belief of Coudenhove-Kalergi, the way ahead to a European State has to be revolutionary in nature: 'Today, the unification of Europe depends upon a dozen of men. Most of them are intelligent and honorable, but they lack the revolutionary element. Though determined to do their constitutional and peoples' duties in an appropriate manner they often fall short in paving new ways'. He continues: 'The actual reason why Europe's unity is still not fully accomplished is not of political but of psychological nature. The cause is human lethargy and unimaginativeness. Those who could make a difference are resolved to hold nice speeches on Europe. But they are not willing to bring themselves to deeds, expected among European people and peoples, which would secure peace and freedom [and prosperity]' (Coudenhove-Kalergi 1971, 163/175).

Though Coudenhove's assertion sprang from previous times, it still contains a portion of truth. The revolutionary patterns of the establishment of a new Europe, as advocated here, ought to be conceived in a significantly different way than Lenin once proposed (Lenin 1971, 166). But in contrast, it is what a Resolution of the United States Senate, initiated by J. William Fulbright, proposed in 1947 – the "creation of a United States of Europe"[*].

The propositions made, especially those by Joschka Fischer and Tony Blair, require more efforts and passion than it could be estimated and anticipated concerning any attempts for sole reforms. However, the latter drawings inherited a flavor of inadequateness, whereas Fischer and Blair

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[*] S. Con. Res. 10 in the Senate of the United States; 80th Congress, 1st Session; March 21, 1947. The document is accessible through Betty Austin, Archivist Fulbright Papers, University of Arkansas Libraries. In particular it states, that "the Congress favors the creation of a United States of Europe, within a framework of the United Nations".

indicate a refreshingly new way of thinking. In so arguing, Blair provides the probably best motive for a rather revolutionary approach: "The trouble with the debate about Europe's political future is that if we do not take care, we plunge into the thicket of institutional change, without first asking the basic question of what direction Europe should take" (2000, 245).

Since this book is intended to resolve such hindrances, it is necessary to reiterate and elaborate the applicable propositions – in particular of Joschka Fischer and Tony Blair – on a future European State in accordance with the state theories as elaborated above. To visualize these approaches the dedicated reader will find a rough drawing of the structure of either concept of the future state in the annex.

Fischer proposes a European State, assembled out of its constituting nation-states. In his elaboration, he dedicates much importance to these solely conceivable building blocks of a future Europe. This inevitably will have to result in the nation-states' increase in importance and weight in the prospected European union of states. If the committed reader focuses on the particular qualification of the respective degree of centralization, Fischer's propositions ought to be perceived as a roughly confederate structured state, since certain competences – in accordance with the overriding principle of subsidiarity – could be transferred back to the constituting nation-states.

The emerging superior state structure, despite the emerging challenges, will have to concentrate and direct their efforts, and thus become responsible and accountable, regarding activities for the sake of the whole community. Obeying fundamental principles of rather liberal state theories, the state in particular will guarantee and provide for internal and external security, whereas a subordinate objective of the federal authorities

could materialize in the state's desire to stabilize and approximate living conditions and standards among the constituting societies.

From this angle, Blair's approach provides significant differentiation. The future of the European integration process, thus, would consequently lead into a gradually decentralized – yet, not disintegrated – union of European states, whereas other proposals in favor of sole reforms may render Europe excessively, yet unsustainably centralized.

Both approaches, however, depart in distinct directions when the discussion turns onto the actual state organization. Fischer lays down his idea of a European executive and legislative body to the extent that Europe's future legislator will be comprised of a bi-cameral parliament. The present Parliament could gain much of importance, since it would evolve into the national parliament's deputies' assembly. Direct election of the future European Parliament's first chamber is not foreseen. In accordance to formerly elaborated state theories, this first chamber would serve and provide for the proper representation of the European people (individuals). Though deemed decisive, Fischer does not concretize the particular drawing of the second chamber. Instead, he poses an alternative construction between the rather disproportional models of the *United States' Senate* and those of the *German Bundesrat*.

It could – in the former pattern – be constituted via the direct-election of deputies who represent the European peoples (nation-states). Once more, Fischer's proposals remain in rather vague shape due to the fact that he does not determine whether the nation-states' representation in the second chamber should take into consideration the respective population of the constituting entities. The latter approach reflects this aspect. It will additionally depend on which particular body, already

established in today's Community structure, would provide the foundation of the exclusively executive government. It is conceivable that the present day's Council would be rendered to the Parliament's second chamber. Due to its prospective limitation to sole legislative acts, such a development could inevitably provoke significant resistance from this body, since it is currently the institution with the widest political influence and the forum providing for the articulation of the nation-states' *government*s' will.

Moreover, in a properly decentralized European State the Council, in its present shape, would prospectively retain much more weight, value, and significance. Alternatively, the present Commission, in whatever personnel configuration, could emerge as the second chamber.

In either case – whether the current Council will become the indispensable second chamber or the Commission – there should be a directly elected executive with far-reaching authorities. If, assumable, the present Commission and its President establish the future Europe's government, the current bureaucracy's structure could retain its present shape. Commissioners or, in a post-enlargement configuration – an appointed or elected *College of Commissioners* would then constitute the president's cabinet's ministers and ministries. Due to the direct mode of the president's election, he would be fully accountable to the parliament, but could in a presidential government's manner only be dismissed in the course of harsh violations of principles and moral failure.

In contrast, the mode of appointment of what is today known as the institution of the Commissioners will determine their accountability. In that case, Fischer intended to reining the president's authorities and for the cabinet to be elected through the parliament. Such a state organization could then only be characterized as a semi-presidential system and hence fall short of some theoretically preferable characteristics and requirements.

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The position of the president would be potentially weakened due to the inevitable power struggles within the executive branch between the directly elected president and the parliamentary determined Commissioners.

In the opposite case, if the president is entitled to appoint his supporting staff and his cabinet by himself – which, nonetheless, ought to be endorsed through the parliament – the president could infuse more power behind his initial tasks. The latter approach would further comply with the fundamental presumption of Max Weber. The distinct alternative forwarded by Fischer, meaning the constitution of executive government from the Council, would realistically contribute to its present day's far-reaching authorities.

On the other side, such an executive with a directly elected president could contradict the concept of *intra-state* federalism (due to nationally determined policies of the Council), while simultaneously jeopardizing any attempts to separate competences and applying the principle of subsidiarity.

Some commentators (see Holzinger/Knill 2000) gravely notice that this presidential mode of European governance would inevitably contravene to EU's tradition and paradigm of a rather parliamentary set of democratic institutions. The proposed concentration and relocation of competences at appropriate federal levels does not – as alleged – provide for a de-democratization and re-nationalization. It should rather be perceived as the return to the roots of any European policy. The old pleas for an increase of the parliament's competences would then be pursued if it would emerge as the sole legislative authority.

Particular critics of Fischer's proposals declare his approach unrealistic, since the president is supposedly elected through direct ballot vote. This, so the opposing arguments, could not be accomplished due to the lack of a workable party milieu on the European level. The latter,

however, ought to be conceived as a significantly different connotation than a voluntary association of Europe's political elites (Siedentopp 2002, 188).

This line of argument describes the most apparent problem of critical commentators – they are suffering from nationally biased experiences, while trying to adopt the respective national model of governance onto the European structure. It actually shows that the debate on a future Europe is still conducted from the respective national positions, not from a European point of view (Kreile 2001, 256). Larry Siedentopp thus pleas that the ultimate goal is the creation of a culture of consensus in Europe: 'If such a culture is hard to achieve among nation-states, how difficult would it be in a federal state of continental dimension?' Thus, Siedentopp questions: 'where are Europe's Madisons?' (Siedentopp 2002, 43, 46).

Europe, and more so a European State, in any configuration will maintain its *sui generis* character. The establishment of a firm set of European party machineries – as Max Weber indicated – could easily jeopardize the fragile beginnings of an emerging European democracy. Instead, a directly elected president – along with his parliamentarian cabinet, if Fischer's posed alternatives are utilized – would only succeed, if they could win the sovereign's confidence in competitive patterns. Such procedures would comply with Weber's postulate in favor for a firm and charismatic leadership (Siedentopp 2002, 190; Weber 1919b).

Blair's propositions regarding an altered appearance of the European institutions do not completely depart from the present EU's mixed and sometimes bizarre supranational/intergovernmental character of organization. Nonetheless, Blair's suggestions could be perceived in favor of an indigenous European State structure.

According to his approach, the Commission retains its right for legislative initiatives. It may be assumed that a constructive division of executive and legislative authorities within the respective future government bodies will not prevail. Simultaneously, as Blair argues, this may render any initiatives of purely sectional interests improbable to occur.

The European Parliament in its legislative purpose will continue to work in its established patterns, whereas it ought to accumulate *factual* legislative powers, i.e. the Right of Initiative. The executive branch remains, in Blair's record, a rather vague manifestation, though he prefers a cooperative and complementary existence of the Council and the Commission. While the Commission would be supposed to provide for the administration of the executive tasks, the Council – as the forum of reconciliation of concerned national interests – might actually emerge as the initial head of the European union of states. The institution of the subsequent European Council, in Blair's view, unable to reconcile national differences, could develop into an extracurricular body, providing political guidance to the Council. Simultaneously, it would serve as the forum for the articulation of the European peoples' general will – to paraphrase Rousseau's approach. To maintain the framework, the Commission's President – as the head of the administrative part of the executive branch – shall participate in the European Council's gatherings, while determining the political agenda on equal terms. Thus, the Commission's independence as the guardian of the Treaties would be preserved, while it would retain its rights of initiative. The Council then, as the formal head of the European State, could be streamlined, since the adherence of the principle of subsidiarity ought to become objective of its supporting administration, i.e. the Commission.

According to Blair, particular national interests could be minimized while Europe's desire to speak firmly with one voice could straightforwardly be achieved through a slight modification of the Council's governance procedure. Blair suggests, altering the Council's presidency towards a slowly rotating college or executive committee of two or three countries at the helm, whereas smaller and larger countries ought to be represented in the college respectively.

Finally, Blair deems the creation of a second parliament chamber necessary, which ought to be excluded directly from any legislative deeds. Instead it would provide political guidance to the executive branch regarding the adherence to the previously agreed to *Statement of Principles*, which clearly determines and restricts the competences of either federal level, those of the nation-states or of the superior federal institutions. However, Blair does not further determine the way this second chamber shall be constituted.

Blair's propositions – in contrast to those of Fischer – deem more favorable from the current perspective, since an adaptation of the existing Treaties is not inevitable. In contrast to Fischer's approach, the latter proposals do not provide for an increase in state institutions, hence are significantly inscrutable. However Blair's proposals promote some suggestions already rose earlier.

Finally, the above summations lead the discussion to propositions made by the previously cited Richard Coudenhove-Kalergi. Committed to a major life goal – as he persisted to emphasize in his writing on *Paneuropa* – it was Coudenhove to be confronted with even worse obstacles in achieving his vision.

Europe and the world had yet not recovered from the wounds which the First World War left when the second episode of the world's final collapse was heralded. Already in 1923, he predicted another unprecedented catastrophe for the entire civilization, if Europe's peoples do not settle their disputes and resolve to go ahead united (Coudenhove-Kalergi 1926).

Nonetheless, at the high stage of the war, when the most cruel battles of the Second World War were still to fight, a group of emigrants – among them Coudenhove-Kalergi – devoted much efforts to answer the most vital question towards the future of Europe: How could Europe's peoples appropriately coexist on the same continent after the last battle of the war will be fought.

The only feasible answer, however, was the creation of a firm framework – a state, in a federal or confederate structure –, which first would allow people to live and co-exist next to each other, and later to reconcile and integrate for the sake of the common good (Churchill 1987. Speech on March 21, 1943). This very much complied with Coudenhove-Kalergi's exclamation for solidarity of rationality and reason (1926, 111).

Remarkably, Coudenhove testified in 1944 – before the conclusion of World War II – that "the people of Europe are not willing to face a third World War by maintaining international anarchy, but that they desire to assure their peace and liberty by some kind of federal union" (1944, 3).

The result of such considerations and thoughts were a *Draft Constitution of the United States of Europe*, issued by Coudenhove-Kalergi's Pan-European Union and the Research Seminar for European Federation of the New York University.

Among his collaborators were such renowned politicians and academics as Oscar Halecki, then director of the Polish Institute in New York, Milan Hodža, the last Prime Minister of the former Czechoslovak Republic, the economist and liberal thinker Ludwig von Mises, and Paul van Zeeland, the former Prime Minister of Belgium, and others. Unwillingly, Naumann's testimony proved to be right: 'War unites!' (1915, 11).

Coudenhove did not hesitate to state, that the final draft "has merely a tentative character. Its authors have been working for no government or official institutions. They do not pretend to have established the Constitution of future Europe; nor do they expect that European governments will blindly follow their suggestions".

However, their efforts crystallized in a draft for a European constitution, which was subsequently published. Paradoxically, Coudenhove-Kalergi mentioned the existence of the *Draft Constitution* only with one single sentence in his autobiography (1966, 271), though it entails several important aspects concerning the discussion on Europe's organization, which never lapsed over the course of time.

History, however, took another course, while these promising proposals fell into oblivion. Instead, other visionaries sophistically and effectively brought forward their ideas, while certain national peculiarities, but more so the increasingly tense political situation over Europe, urged policy-makers to endeavor Europe's partial rapprochement through methods and means we see and know today.

It thus deems necessary to revitalize and invigorate Coudenhove's encouraging approach. Due to the fact that this draft has limited

accessibility to the public[*], the dedicated reader will find an identical duplicate in this paper's annex. Simultaneously, this ought to be understood as a contribution to the current debate. To once more evoke Coudenhove's avowal: "It is the great merit of this Draft that it has created a sober basis for international discussion by transferring the problem of European integration from nebulous realm of generalities to the clear daylight of specific issues. This indeed is the principal purpose of the document" (1944, 5).

The European State, intended through this *Draft Constitution*, seems to correspond to and answer the major issues of the present days' European Union. Simultaneously, it pays tribute to the fundamental state theories while envisaging a European State in roughly liberal tradition: "To reconcile these contradictory tendencies this Draft attempts to guarantee to all states of Europe the maximum of independence compatible with their political and economic self-interest. The United States of Europe would therefore become a political organization very different from that of the United States of America. For the States of Europe would be united only in a strictly limited sense, for the sake of their common security, liberty and prosperity".

Though Coudenhove's companions, as early as 1944, already anticipated an economic union – subsequently and indispensably followed "by an integrated fiscal and currency system" (1944, 6-7, Articles 64, 65) – , it is inevitable that this source rose from different times and terminology with significantly different problems than those of present days. This could

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[*] Though I devoted much effort in intensive search, I could approach only two publicly accessible copies of the original text. In Europe: a microfilmed version at the library of the University of Göttingen, and in the US another copy at the Library of Congress, Washington, DC.

be made apparent, for example, through provisions concerning colonial issues.

Nonetheless, the institutional framework, which is provided for with the *Draft Constitution*, may serve as another reasonable state structure model for a future Europe.

Accordingly, Article 2 (see annex *Draft Constitution of the United States of Europe*) illuminates the essence of any federal organization. The sovereignty of the constituting nation-state is assured, while the establishment of common institutions for common interests is agreed upon. Subsequently the verification of the then less famous principle of subsidiarity is accentuated.

Complying with Article 13, the member states' authorities and constitutions provide autonomously for their indigenous needs. Furthermore, *model legislation* is considered as the foremost method of the federal institutions to have an effect on national authorities. Subsidiarity penetrates even deeper. In fact, the same provision of Article 13 endows groups, which "desire an autonomous status within the member states", with the right to establish their respective community, guaranteed through the European constitution.

In regard of this paper's considerations, one of the most important provisions concerning the interstate relations is Article 16: The federal authorities "may enact model legislative on any subject outside of its immediate competence and recommend the adoption of such legislation to the appropriate organs of the governments of the member states". This notion is subsequently adhered to with the constitution's social provisions.

Article 38 poses that the member states "pledge themselves to provide within their own respective jurisdictions a comprehensive system

of social assistance". Accordingly, the federal institutions, bound by their constitution, establish a modest framework, which subsequently ought to be filled by the member states in their own responsibility and accountability.

Article 44, another remarkable approach, pushes progressively in favor of the integration in general: "Should the Congress of the Union adopt a single official language for intra-European intercourse, member states agree to provide instruction in the use of that language in addition to instruction in national languages".

Who, in the year 1944, could ever think of a common European foreign and security policy? Coudenhove-Kalergi and his associates did. Though rather deemed to preclude internal hostilities, the respective provisions could correspondingly apply to firm European security architecture in the future.

Accordingly, the Union "shall have power to take all measures … to protect the territory of the Union against aggression". Thus, to "protect and defend the Union, a professional armed force shall be organized, trained, equipped and commanded under the Union's sole responsibility". Furthermore, "the personnel of the armed forces of the Union owe allegiance exclusively to the Union" (Articles 46, 47 and 51). Finally Article 54 succinctly poses that the "Union shall have power to conduct foreign relations and to conclude treaties and agreements to further the purposes of [the constitutional limited objectives]. Member states may conclude treaties with the approval of the Union".

The interpretation of the *Draft Constitution*'s provisions, however, shall be left to constitutional lawyers. In regards to the pending discussion the patterns of internal organization of federal authorities are more relevant (see annex).

The parliament (Section XI of the *Draft Constitution*) – the *Congress* – of this European federation is to constitute from two chambers, whereas the *House of Representatives* will become the forum for the people's representation of the member states. Its members shall "be chosen by popularly elective chamber of the parliament of the member state".

Direct election by the European people is not assumed. In a refreshing manner, however, the *Draft Constitution* provides a simple formula regarding the number of the seconded representatives. As opposed to the present debate of reforming EU institutions, the only method offered in the *Draft Constitution* is population of the constituting member states – neither financial contributions nor estimated/anticipated political weight are factors. The *House of States* are to be constituted from two delegates if the member state contains more than 2½ million inhabitants, otherwise only one delegate can be chosen. Though Article 72 determines that delegates to the *House of States* shall be chosen as each member states decides, it may be assumed that those chosen would likely be envoys from the particular national governments. This mode of representation will provide the smallest states with comparatively more influence in legislative issues. Article 76, finally, states that "the Congress shall have power to deal with all matters falling within the competence of the Union. Except as otherwise expressly provided… the Congress shall have power to establish any department, office, agency, or other unit necessary to the operation of the government and administration of the Union". Likewise, this provision refers to the legislative-executive relations. The *Congress* has the sole authority to establish the institutional framework of the executive branch.

Despite limited prospective effect of the parliament's budgetary weapon in a respectively decentralized European federation, the legislative

body shall be granted additional means to restrict the executive branch, the *Council*. The latter is appointed by and accountable to the *Congress*.

Coudenhove's propositions regarding the particular constitution of the executive *Council* are affiliated to the Swiss model, balancing the peculiarities and respective population of the constituting entities. The *Council* shall be comprised of seven elected members, whereas not more than one member should come from one country and at least three shall come from the largest member states. The *Council* itself appoints the *President of the Union* on a yearly basis, acting as chairman of the executive body and simultaneously as the representative of the federation.

This may, in contrast to the propositions of Blair and Fischer, constitute a third alternative towards the yet inevitable necessity to establish a European union of states in a federal organization.

The change of current institutional arrangements to those proposed by Coudenhove-Kalergi would involve a revision of the Treaties. But, simultaneously, this alternative of a European federation potentially ought not to provoke as much resistance as those proposals of Fischer potentially might face. Moreover, it could be assumed that the envisaged state – in the federal traditions of Swiss and the United States – would rather adhere traditional, liberal principles in terms of state duties and resources' requirements.

5. Instead of a Conclusion

The establishment of a coherent and firm institutional framework for a European union of states in federal patterns would obviously mean the squaring of a circle. Too many details, too many peculiarities, and too little passion and commitment from policy-makers render the endeavor extremely difficult and complex.

All aforementioned propositions – those from Fischer, Blair, and finally Coudenhove-Kalergi – entail particularly practical and applicable details, which ought to be considered in either case. None of the considered proposals entirely comply with all of the previously elaborated fundamental state theories, though adhering to particular aspects. Especially the patterns of executive power and its relationship to the legislative branch vary continuously among all contributors. This does not mean that either proposition would prove unrealistic or even inappropriate. But, as shown, all approaches suffer from certain inconsistencies.

The proposals endorsed and promoted herein might be conceived as the attempts to find a firm political organization of *Europe*, which Coudenhove-Kalergi had in mind (1926, 8). Thus, if the current world is to characterize through a post-modern status (Schmidt 1995, 658), then the future Europe federation could emerge from a *post-post-modern* status, providing relief from the present day's challenges and those coming, while giving Europe an appropriate political and institutional order.

Friedrich Naumann probably best identified the obstacles for any attempts to interfere with only a trivial reform, of the EU institutional framework even if deemed sufficient by those concerned: 'The utmost perils arise from the hesitance and resistance of the existing powers,

institutions, and offices' (1915, 231). Hence, the plea for a liberal minimal state would not only comply with some theories of state, but will first and foremost reduce the importance and informal dependence on state bureaucracy, which would, in the end, counter even Weber's reservations.

Other hesitations among particular prospective constituting member states regarding the prevalence of the nation-states ought to be eased within such a less tenuous state structure of a future Europe, as Naumann once illustrated, 'because one cannot repulse off the bank with an overloaded boat' (1915, 231). Coudenhove-Kalergi already acknowledged the importance of communication of these ideas along with its respective details at least to Europe's elites (1926, 8).

Europe inevitably is run by elites. Siedentopp argues that in Europe formerly existed common transnational and universal political elite, rooted in Europe's multiplicity of cultures and determined by a common belief based upon a historically shared religious foundation. If we do not succeed to establish such an elite anew, the process of integration will face tremendous obstacles. Yet, the particular national political classes did not come to terms in favor of further progress in integration. As long as this does not occur, the European experiment stagnates (Siedentopp 2002, 198-9).

Lastly, this paper was not intended to elaborate on the finality of Europe's integration process. It rather reflects on the way thereto. But it is hardly feasible to consider the finality of Europe at all. Probably, this would render the entire process irrelevant and would at the same time jeopardize everything achieved.

Instead, European integration shall rather be described with the metaphor of Sisyphus, whose life-long struggle to accomplish his aim failed. If, complementarily, the European integration process would find an end at a certain stage, inevitably it would immediately sacrifice those, which was achieved and created during the last five decades.

Coudenhove once stated: 'If not goodwill and conscious, then hardship will create *Paneuropa*' (1926, 96). This reveals the dominant driving force, which – whenever it occurred – raised the European integration to higher stages. Significant progress in the European experiment was achieved only when its further prosperous existence was challenged and contested by major crises.

Correspondingly, Siedentopp argues that, because there is no urgent need for impartial but passionate discourse, the debate on the future of Europe is caught in mediocrity. Indeed, there was no urgent need until the Western hemisphere was shook by the events of *September 11* and the subsequent developments. Yet, the current discussion probably only conceals a protracted crisis within Europe (Siedentopp 2002, 46).

The peculiarity of the European experiment ever has been its adherence to both liberal and realist theories of international organizations. Europe, in the past five decades, has been something revolutionary and unprecedented being shaped by its environment as wells as a proactive shaper of its secure and prosperous sphere. The current tragedy from which the European integration process suffers is that, since the end of the Cold War, although generally considered a fortunate, no immediate crisis had either jeopardized the achievements or justified further progress in the European integration.

This results in the movement of the discussed and, at times, admired European State towards a nebulous and vague distance. According to an

evolutionary interpretation of both realist and liberal theories, there is no immediate necessity to change the current status quo in institutional terms (Sterling-Folker 2001, 96-8).

One thus can only hope that the creation of a European State might be accomplished through the goodwill, conscious and sophisticated deeds of responsible Europeans – before another, in terms of evolutionary theorists' significant, challenge to Europe's peace, liberty and prosperity arises. In the same vein, the picture at the front-page probably provides for the best metaphor: A future Europe must not be created by combat soldiers rather than by responsible and charismatic politicians.

Thus, to conclude with the words of Winston Churchill, one of the first and foremost Europeans: "Along these lines I plea: 'Let Europe revive!'" (see Coudenhove-Kalergi 1966, 287). This book shall be a contribution towards this end.

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Draft Constitution of THE UNITED STATES OF EUROPE

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issued by the
PAN-EUROPEAN CONFERENCE
and the
RESEARCH SEMINAR FOR EUROPEAN FEDERATION
of
NEW YORK UNIVERSITY

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[*] Coudenhove-Kalergi 1944

PREAMBLE

The states of Europe, animated by a desire to safeguard their common cultural heritage, to avert the scourge of internecine war, to rid themselves of the intolerable burden of armaments, to assure social security and an ever-rising standard of living, to guarantee the personal, national and religious freedom of all European, and to make a positive contribution to a more orderly world, have agreed upon these ARTICLES OF ASSOCIATION AND UNION.

SECTION I – The States and the Union

Article 1.

The organization established by the following ARTICLES shall be known as the United States of Europe, hereinafter referred to as the UNION.

Article 2.

The UNION is an association of sovereign states which have decided to establish and maintain common institutions in the interest of their security, prosperity, and liberty.

Article 3.

Member states retain their sovereign rights unimpaired except in so far as these rights are limited by these ARTICLES.

Article 4.

The UNION shall have its own flag and seat of government.

Article 5.

Accession to the UNION shall be a voluntary act. Member states shall be those which ratify these ARTICLES by the processes hereinafter formulated.

Article 6.

The existence of the UNION does not preclude the organization of groups of member states for purpose not inconsistent with those of the UNION. The consent of the UNION shall always be required for such group organizations.

Article 7.

The UNION shall guarantee the reserved sovereign rights and boundaries of each member state and is authorized to take appropriate measures to secure this guarantee.

SECTION II – Internal Constitutional Standards of Member States

Article 8.

The constitution of each member state shall have the character of fundamental law enforceable in an appropriate state court.

Article 9.

The constitution of a member state shall provide for at least one house of its parliament elected by free, equal, and secret ballot by the adult inhabitants of one or both sexes who are citizens.

Article 10.

The constitution of each member states shall secure to its parliament the power to pass all laws and to vote taxes, appropriations and other measures relating to finance and property.

Article 11.

The constitution of every member state shall make the privileges and prerogatives of its parliament inalienable and shall guarantee in explicit terms that these privileges and prerogatives may not be transferred to any other authority except for the duration of an emergency as described in Article 32.

Article 12.

The constitution of every member state shall assure the right of the opposition in its parliament.

Article 13.

The constitution of every member state shall guarantee local or regional authority within a clearly defined territory of the state, provided such groups desire an autonomous status within the member state. The desire for autonomy shall be determined by a plebiscite held under the authority of the UNION.

SECTION III – Interstate Relations

Article 14.

Every member state shall give full faith and credit to the public acts, records, and judicial proceedings of every other member state when these relate to private rights of persons.

Article 15.

Except where a political offence is charged, every member state shall render up a fugitive from justice to the executive authority of the member state from which he fled.

Article 16.

The UNION may enact model legislative on any subject outside of its immediate competence and recommend the adoption of such legislation to the appropriate organs of the governments of the member states.

Article 17.

Citizens of member states may travel freely across the frontiers of any other member state for the purpose of temporary residence. For such a purpose no passport or visa shall be required. Persons with a criminal record and those likely to become public charges are subject to such regulations as the member state choose to establish. The permanent migration of persons from one member state to another is subject to such regulations as the Congress of the UNION may establish.

Article 18.

Every dispute arising between member states must be settled by peaceful means. If the dispute is of a juridical nature, it must be submitted for adjudication to the Supreme Court of the UNION. If dispute is of a non-juridical nature, the Council of the UNION shall have power to bring about a final settlement by majority vote.

SECTION IV – The Rights of the Individual

Article 19.

Every person is equal before the law; there shall be no discrimination among persons or classes of persons based on race, language, or religion.

Article 20.

Every religion shall be respected and its adherents shall have the rights to practice its form of worship provided they do not advocate seditious or treasonable practices or contravene regulations affecting public safety or morals.

Article 21.

Liberty of press, publication, speech, and of teaching are guaranteed. A member state shall not impose any censorship except in time of emergency as defined in Article 32.

Article 22.

Neither any member state nor any governmental authority thereof shall ever attempt to exercise monopolistic control over any instrument or medium of opinion or propaganda. Where such instrument or medium is publicly owned or operated, full opportunity shall be afforded organized groups, other than those having official status, to use such publicly owned or operated instrument or medium on fair and reasonable terms for the purpose of expressing their opinion or propaganda.

Article 23.

The people of a member state shall have the right peaceably to assemble for the purpose of petitioning the authority for redress of grievances. Any other peaceful method of petitioning for a similar purpose shall be authorized.

Article 24.

Every form of organization, political, economic, and cultural shall be authorized. No organization shall be dissolved nor shall its property be confiscated unless it has been judicially ascertained that such organization secretly or openly advocates the overthrow of the established social and political order by violence or that it advocates disrespect for, or violation of, existing law.

Article 25.

The right of private property is guaranteed subject to the member state's recognized powers of taxation, police regulation and expropriation for general welfare with compensation.

Article 26.

No person shall be denied the use of his native tongue whether or not it is recognized as an official language.

Article 27.

No person shall be deprived of life, liberty, or property except in accordance with due process of law.

Article 28.

No person may be seized or imprisoned unless apprehended in the commission of a crime or unless a warrant of arrest, specifically from a proper judicial magistrate or tribunal.

Article 29.

A person arrested and imprisoned for cause shall be given speedy and impartial public trail; he shall have the right to obtain counsel, to be confronted by witnesses against him, and to the issuance of compulsory process to obtain witnesses in his behalf.

Article 30.

No person shall be indefinitely confined or be restricted in his movement except as a punishment for a crime of which he shall have been duly convicted in a regular court of law.

Article 31.

A private dwelling house shall be immune from search and the effects therein may not be seized except by authority of a warrant issue by a proper judicial magistrate or tribunal.

Article 32.

Martial law and courts-martial shall not supersede civil courts and civil processes for non-military affairs, nor shall a state of siege be declared except in time of war or emergency duly proclaimed by the highest executive authority of the member state. To continue in effect, such executive proclamation must be ratified by the parliament of the member state within three months. Otherwise the proclamation shall lapse and no new proclamation, relating to the same emergency, may thereafter issue unless authorized by the parliament of the member state.

Article 33.

Torture may not be used to extort a confession or for any other purpose. No cruel or unusual punishment shall ever be imposed; nor shall any person be placed twice in jeopardy of life or limb for the same alleged offence; nor shall the conviction of any person adversely affect the civil rights of any of his relatives or associates.

Article 34.

No person shall ever be held as a hostage.

Article 35.

The secrecy of postal, telephonic and telegraphic communication shall be inviolable. The authorities of a member state shall not interfere with such communications except in a period of emergency as defined in Article 32.

Article 36.

The stipulation of these minimum rights and privileges in any member-state constitution shall not be construed to deny or disparage other rights which may likewise be stipulated in such constitution or which may be derived from the general law or public policy of such state.

Article 37.

Every member state of the Union agrees to incorporate a statement of the rights stipulated in this section (Articles 19-36) in its own constitution, to provide effective administrative and judicial process for their enforcement and to facilitate appeals from its own courts to the Supreme Court of the union whenever interested parties, whose rights as defined in this section (Articles 19-36) have allegedly been violated, invoke the procedure of appeal as described in Article 90.

SECTION V – Social Rights

Article 38.

Member states of the UNION agree that lasting peace depends, in part, upon an integrated and progressive policy aiming at freedom from want. They accordingly pledge themselves to provide within their own respective jurisdictions a comprehensive system of social assistance, such a system to take account of the magnitude and distribution of national income. This system shall include: compulsory insurance against accidents, illness, old age, and unemployment; medical assistance to expectant mothers and infants; social assistance to mental defectives and the incapacitated; and pensions for widows and orphans.

Article 39.

Member states agree to assure universal and compulsory primary education and opportunity for secondary education for all children and adolescents and to provide higher and technical instruction for all

students of outstanding qualifications at public expense if not otherwise provided.

Article 40.

Member states agree that within their respective jurisdictions, they will enact legislation for the protection of labor. Such legislation shall guarantee the right of collective bargaining and arbitration of disputes between labor and management. It shall also fix the maximum hours of work and minimum of wages for various employments and provide standards for sanitary conditions in factories and other places of employment.

Article 41.

In the regulation of their respective internal economies, member states pledge themselves to seek to exploit fully their natural resources and protect interests of consumers with a view to increasing their national income and raining the standard of living of their inhabitants.

Article 42.

Member states agree to inaugurate an agrarian reform in the case of the latifundia which shall aim at establishing the rural population on privately owned holdings directly cultivated by the proprietor. Such a reform shall be supplemented by adequate agrarian credit facilities and the utilization of agricultural cooperatives.

Article 43.

Member states agree to co-ordinate their efforts for the establishment of a European health service and for combating diseases and epidemics.

Article 44.

Should the Congress of the Union adopt a single official language for intra-European intercourse, member states agree to provide instruction in the use of that language in addition to instruction in national languages.

Article 45.

All social rights identified in this Section (Article 38-44) shall also be made available in each member state to residents who are citizens of other member states.

SECTION VI – Defense

Article 46.

The UNION shall have power to take all measures to prevent its member states from menacing international peace and order and to protect the territory of the UNION against aggression.

Article 47.

To protect and defend the UNION, a professional armed force shall be organized, trained, equipped and commanded under the UNION'S sole responsibility.

Article 48.

Member states are bound to assist the UNION in all matters pertaining to the organization, training, equipping and housing of the UNION'S forces. This stipulation includes facilities for airfields, ports, bases, fortifications and other installations.

Article 49.

No more than one tenth of the total strength of any branch of the armed forces of the UNION shall consist of nationals of any one member state.

Article 50.

The UNION shall own, supervise or otherwise control the production of munitions and other war material or any type of production which can readily be converted into the production of munitions or war materials. It shall also control the traffic in munitions and armament.

Article 51.

All officers of the armed forces of the UNION, including their commander-in-chief, shall be appointed and recalled by the UNION. During their term of service, the personnel of the armed forces of the UNION owe allegiance exclusively to the UNION.

Article 52.

Member states may maintain armed forces for internal order and security on their respective territories under regulations established by the UNION.

Article 53.

Member states possessing or controlling colonial territories may be authorized by the UNION to maintain colonial forces in those

territories. Such forces can never be transferred to the Continent of Europe without the consent of the UNION.

SECTION VII – Foreign Affairs

Article 54.

The UNION shall have power to conduct foreign relations and to conclude treaties and agreements to further the purposes of these ARTICLES. Member states may conclude treaties with the approval of the UNION, and may exchange diplomatic and consular representatives among themselves and with foreign states.

Article 55.

The UNION shall co-operate with other states or groups of states to establish a world organization for the maintenance of peace and security.

SECTION VIII – Colonial Territoires

Article 56.

Colonial territories shall remain under the direct jurisdiction and sovereign authority of the member state to which such territories are attached. This applies also to protectorates and mandates of member states.

Article 57.

The nationals of every member state of the Union shall have the same rights and privileges in the colonial territory of any member state as are enjoyed by nationals of that member state.

Article 58.

The governing member state is bound to act in its colonial territory as a trustee for the people of such territory. It shall promote the cultural and economic life of depended peoples as rapidly as possible and shall introduce among such peoples a system of political education calculated to advance them most rapidly from a condition of political dependence to one of political responsibility and ultimate self-government.

SECTION IX – Economic Policy

Article 59.

The economic policy of the UNION shall aim at the unification of the European economy; within five years following the organization of the Union, the Congress is authorized to establish a European customs union with inter-European free trade.

Article 60.

Pending the establishment of a customs union, the member states agree not to establish unilateral tariffs, foreign exchange controls, import quotas, export premiums, transport differentials, blocked accounts, multiple currencies in one and the same state, or any other obstacles affecting the interstate trade of the UNION. Such controls shall only be established by agreement between member states affected.

Article 61.

As one step towards a unified European economy, the UNION shall use its power of enacting model legislation to provide for the reduction and ultimate elimination of all internal trade barriers.

Article 62.

By enacting model legislation, the UNION shall indicate the type of price and wage policies to be implemented by member states to encourage production and consumption.

Article 63.

The UNION shall assure the unification of the European transport system within a period to be determined by the Congress.

Article 64.

A central bank of Europe shall be established by a special statute of the Congress. It shall have the prerogative of issuing currency and shall serve as a clearing and rediscounting agency for the central banks of the member states.

SECTION X – Revenues of the Union

Article 65.

The Congress may levy upon member states for contributions to the treasury of the UNION, the contribution of each state to be in proportion

to its ascertained national income. Collection shall be made by authorities of each member state.

Article 66.

The revenue of the UNION shall also include all of the net proceeds of import duties levied by the member states upon their mutual trade and fifty per cent of the net proceeds of import duties levied upon goods coming from outside the UNION.

Article 67.

Proceeds from the domain of the UNION, whether from exploitation or sale of immobile property or from operation of enterprises producing goods and rendering services, shall go to the treasury of the UNION.

SECTION XI – The Congress

Article 68.

The deliberative organ of the UNION shall be a Congress consisting of a House of Representatives and a House of States.

Article 69.

In the House of Representative, the member states shall be represented according to the following formula:

a) states with more than 40 million inhabitants 10 representatives
b) states with less than 40 million but more than 20 million inhabitants .... 8 representatives
c) states with less than 20 millions but more than 10 million inhabitants .... 6 representatives
d) states with less than 10 million but more than 5 million inhabitants .... 4 representatives
e) states with less than 5 million but more than 2½ million inhabitants .... 2 representatives
f) states with less than 2½ million inhabitants .... 1 representative
g) any member state possessing colonial territory shall have one additional representative
h) for purposes of representation in the Congress of the UNION, San Marino shall be identified with Italy, Monaco

with France, and Liechtenstein with Switzerland.

Article 70.

The representatives of the member states in the House of Representatives shall be chosen by the popularly elective chamber of the parliament of the member state.

Article 71.

The House of States shall consist of two delegates from each member state of the UNION with more than 2½ million inhabitants and of one delegate from each member state with less than 2½ million inhabitants. The principle of Article 69 (h), governing the representation of San Marino, Monaco and Liechtenstein in the House of Representatives, applies also to their representation in the House of States.

Article 72.

Delegates of member states to the House of States shall be chosen as each member state shall determine.

Article 73.

When sitting separately, the two houses of Congress shall be co-ordinate in authority and their agreement shall be necessary to a decision.

Article 74.

Each house shall be competent to determine the character of its internal organization and its rules of procedure subject to the following requirements:

pending the choice of a single official language by the Congress, English and French shall be the official languages
a) a member of either house may speak in his native tongue and be provided with the service of an interpreter
b) a record vote may be demanded on any principle question by any member and the vote be taken accordingly
c) an absolute majority of the members of each house shall constitute a quorum and decisions shall be taken by majority vote unless stipulated in these ARTICLES

Article 75.

The Congress shall meet on call of the president of the House of Representatives at least once each year. The President of the UNION may call it into special session.

Article 76.

Except as otherwise expressly provided in these ARTICLES, the Congress shall have power to deal with all matters falling within the competence of the UNION. Except as otherwise expressly provided in these ARTICLES, the Congress shall have power to establish any department, office, agency, or other unit necessary to the operation of the government and administration of the UNION.

Article 77.

The two houses of Congress shall constitute a single assembly when the following matters are considered:
a) the election of the Council or its individual members
b) the proposal of an amendment to these ARTICLES
c) the election of judges of the Supreme Court.

Article 78.

When sitting as a single assembly, each member of the Congress shall have one vote; two third of the total membership of the combined houses shall constitute a quorum.

SECTION XII – The Council

Article 79.

The executive organ of the UNION shall be a Council of seven members elected for terms of four years by the two Houses of Congress meeting as a single assembly. Not more than one member of the Council shall come from the same member state. At least three of its members must be citizens of states with a population of more than twenty millions.

Article 80.

The Council shall be responsible to the Congress for all of its acts.

Article 81.

Each year the Council shall elect, by majority vote, one of its members to be President of the UNION and another member to be Vice President

of the UNION. They shall serve as chairman and vice chairman, respectively, of the Council. No incumbent President may be re-elected or be elected Vice President for the year following his presidency.

Article 82.

The Council shall discharge the duties assigned to it by these ARTICLES or by Congress.

Article 83.

Such administrative departments as Congress may erect shall be placed under the immediate supervision of a member of the Council. The Council shall indicate which department each member shall supervise.

Article 84.

In case of an internal or external threat to the peace and safety of the UNION, the Council is authorized to use whatever measures the emergency may require, including the use of the armed forces of the UNION, to combat such threat. It shall immediately report the circumstances and the measures taken to the Congress.

SECTION XIII – The Supreme Court

Article 85.

The chief judicial organ of the UNION shall be a Supreme Court consisting of fifteen judges. They shall be elected by the Congress sitting as a single assembly by a two-thirds vote. The judges of the Court shall choose one of their number to serve as president of the Court.

Article 86.

The Congress shall choose the judges of the Supreme Courts from lists of nominees prepared by the Council consisting of all present members of the highest courts of the member states and of a maximum of 100 jurisconsults of recognized standing.

Article 87.

The tenure of the judges shall be for life. A judge may be removed for mental incapacity or for the commission of an act which discredits him morally. Charges of removal shall be made by majority vote of the House of Representatives; a decision on the charges thus brought shall be rendered by a majority vote of the House of States.

Article 88.

The Court, as a plenum, shall have original jurisdiction over (A) any dispute of a juridical nature arising out of the interpretation of these ARTICLES; (b) any dispute concerning the competence of any officer or agency of the UNION, including the Congress and Council; and (c) any dispute of a juridical nature arising among member states of the UNION as defined in Article 18.

Article 89.

In exercising its original jurisdiction, decisions of the Court shall be taken by an absolute majority.

Article 90.

The Supreme Court shall have appellate jurisdiction over any case involving a claim that the requirements of section IV (Articles 19-36) have been violated. Appeals may be taken by the interested parties to the Supreme Court of the UNION directly from the highest court having jurisdiction in the member state where the violation is alleged to have been committed. On its own initiative, the Court may also call up for review and decision any case involving an alleged violation of the requirements of section IV (Articles 19-36).

Article 91.

A panel of five members, designated by the president of the Court, shall be competent to hear and decide by majority vote any case appealed or called up for review under the provision of Article 90. No judge who is a citizen of the member state where the dispute originates or who has national ties with the disputants may sit. In making its decision, the panel shall consult with the appropriate experts drawn from the secretariat of the Court or appointed by it who have special knowledge of the national area involved in the case.

Article 92.

A special statute of Congress shall provide for the organization of the Supreme Court; the Court shall drawn up its own rules of procedure.

SECTION XIV – Accession to the Union -Transnational Provision

Article 93.

When ratified by the parliaments or other appropriate constitutional organ of at least ten eligible states, four of which shall have a population

of at least twenty millions, these ARTICLES shall take effect among the states so ratifying. Other eligible states may adhere subsequently by a similar act of ratification.

Article 94.

Member states of the UNION shall adapt their respective constitutions and existing statute and other law to the provisions of these ARTICLES within a period of five years following ratification.

<div align="center">SECTION XV – Amendment and Revision</div>

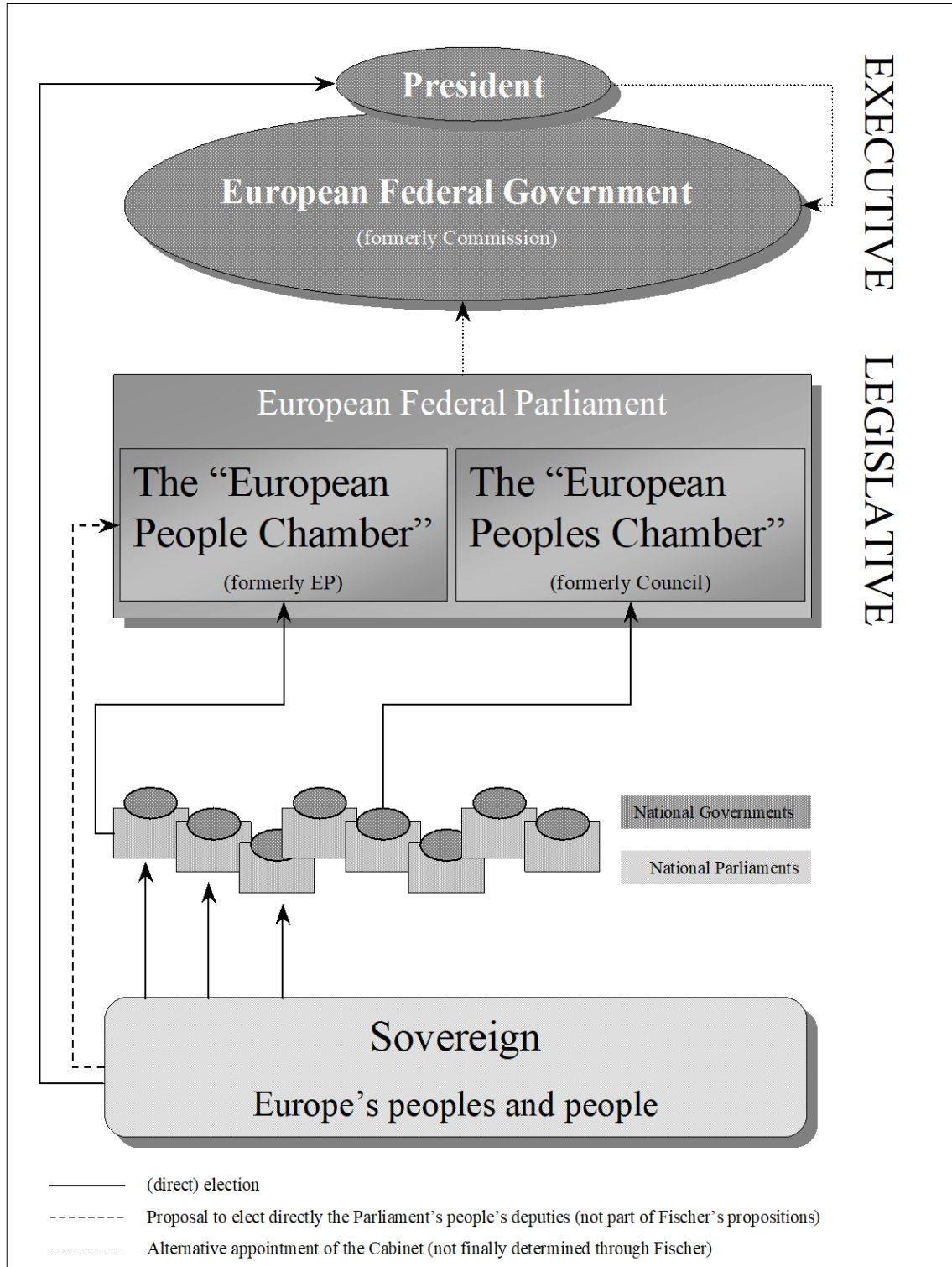### Article 95.

Amendment of these ARTICLES, in whole or in part may be proposed by two of two thirds of the membership of Congress meeting as a single assembly; an amendment shall take effect when ratifies by the parliaments of a majority of the member states among which must be included at least four states with twenty million or more inhabitants.

<div align="right">NEW YORK
April 1944</div>

Proposed European State's Structures

Approach by Joseph Fischer[1]

President

European Federal Government
(formerly Commission)

EXECUTIVE

LEGISLATIVE

European Federal Parliament

The "European People Chamber"
(formerly EP)

The "European Peoples Chamber"
(formerly Council)

National Governments

National Parliaments

Sovereign

Europe's peoples and people

——————— (direct) election

- - - - - - - Proposal to elect directly the Parliament's people's deputies (not part of Fischer's propositions)

··············· Alternative appointment of the Cabinet (not finally determined through Fischer)

[1] Fischer 2000

Approach by Tony Blair[2]

Right of Codetermination of the political agenda

European Council
Heads of States

Executive Committee

Secretary General of the
Council
(Foreign and Defense Policy)

Political
guidance

Head of the Federal State
Council

Executive Administration
Commission

Adherence

Head of Administration
(President of the Commission)

Implicitly appointed

EXECUTIVE   LEGISLATIVE

European Federal Parliament

The "European
People Chamber"

(fomerly EP)

The Convention
Chamber

(w/o legislative authority)

National Governments

National Parliaments

Sovereign

Europe's peoples and people

——————   Elected

- - - - - - -   Political guidance

[2] Blair 2000

Approach by Richard N. Coudenhove-Kalergi[3]

EXECUTIVE

LEGISLATIVE

Annually appointed from the
Council's members

President of the Union

The Council

(7 elected members , 4 years tenure)

The Congress

The House of
Representatives

(corresponding to member states'
population)

The House of
States

(2 representatives per member
states over 2 ½ million population)

National Governments

National Parliaments

Sovereign

Europe's peoples and people

——— (in-/direct) election

——— Alternative appointment

[3] Coudenhove-Kalergi 1944

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Note: Inverted commas ['] indicate a direct quote translated by the author into English, whereas quotation marks ["] were used for direct quotation form the original, hence are not translated.