

Fundamentals of FAEF's Citizens' Convention federal approach

25 December 2021

While the improvement of Article II has not yet been completed, in the week of 20 to 24 December we received a number of additional proposals on the theme of the Common European Interests of Article III. But taken together, these proposals do not yet provide a common thread to properly finalise Article III, which is a central and crucial part of the Constitution.

It gives the board reason to once again going back to basics. We feel it would be useful to highlight the following topics, already discussed in various places in the official documents of the FAEF Citizens' Convention and in the Institutional and Constitutional Toolkit for establishing the Federal United States of Europe, once again in relation to each other.

1. Centripetal federalisation

Johannes Althusius is the political philosopher who, in his Political Method, formulated the foundations of a federal structure of states around 1600. A construction from the bottom up. Only in 1787 did the Philadelphia Convention transform this way of thinking into a concrete federal constitution from the bottom up.

That is centripetal federalism: parts create a whole. Why do they do this? Because they understand that each part on its own is incapable of looking after common interests. Therefore, they create a whole, a centre, to look after common interests. The strength of such a way of organising is that the whole relies on the parts. Not the other way round.

The other way of federalising is centrifugal: the whole creates the parts, from top to bottom. It is original unitary states that federalize centrifugally. The inherent weakness of that way of federalising is that the centre, the whole, will always try to put centralist, unitary aspects into federal state formation. These are powers with which the whole has the freedom to interfere from top to bottom in the functioning and structure of the parts. One sees this, for example, in the federation of India. Their constitution has some sixteen unitary rules including the power of the President to appoint the Governors of the 28 states.

Two places in our constitution embody the centripetal operation from below and thus prevent top-down operation. The second paragraph of Article I states:

"The powers not entrusted to the United States of Europe by the Constitution, nor prohibited to the States by this Constitution, are reserved to the Citizens or to the respective States."

The second paragraph of Section 3 of Article VII states:

"The United States of Europe will not interfere with the internal organization of the States of the Federation." [the words 'United States of Europe' will be amended once we deal with Article VII].

2. Asymmetric and symmetric federalisation

The States of Europe differ greatly from one another. In terms of constitution, there are republics, monarchies and a grand duchy. In terms of organisation, there are centralized unitary states, decentralized unitary states, devolved states and federal states. In terms of cultural identity, languages, dialects, traditions and customs, the diversity is unprecedented. This also applies between parts of Europe: the northern, southern, eastern and western parts.

This is where the concepts of asymmetric and symmetric federalising come into play.

A limited interpretation of asymmetric federalising means that differences between states lead to differences in the extent and nature of their powers. For example, in the centrifugally designed federal Belgium, the small German-speaking federated part does not have the same recognition and status as French-speaking Wallonia and Dutch-speaking Flanders. The limited interpretation of asymmetry thus refers to the granting of powers for federated states that can vary from one federated state to another. A broader interpretation of asymmetry respects the great difference between federated states - and groups of federated states - as such. This is the case in our constitution. The extent and depth of the generic and specific differences between and within European states are so great that asymmetry in the sense of respecting and maintaining that diversity is one of our federal building blocks. But at the same time, we will certainly not repeat the heavy failures of the intergovernmental system and the Treaty of Lisbon that not only failed in creating a European Federation but filled the EU system with opt-outs and exceptions to generally binding rules that are exacerbating malfunctions, conflicts and Brexit-like situations.

In addition, symmetrical federalisation plays a role: states have the same status and therefore the same powers. This is the case, for example, in the United States, Germany and Switzerland. But here, words sometimes play a difficult role. Although it is certain that Switzerland is a federation, the word 'confederation' is still used in the name of that state. For example, Canada calls itself a symmetrical federation but in reality, it is asymmetrical because for Quebec the rules differ. In a sense, the US is also asymmetrical because for Puerto Rico, Guam, Virgin Islands, Samoa, the statute differs as well. We prefer to interpret the concept of symmetry in terms of their equality before the constitution: they derive from the constitution the same rights and duties, the same responsibilities and powers, the same shared sovereignty with the federal body.

The latter brings us to the next elementary building block.

3. Vertical separation of powers, leading to shared sovereignty¹

¹ The vertical separation of powers is the same as establishing subsidiarity. In other words, nowhere in a well-designed federal constitution is there a sentence that points to the principle of subsidiarity for the simple reason that the concepts of 'vertical separation of powers' and 'subsidiarity' coincide. See for more information the paragraphs 4.2.5, 4.2.8, 5.2, 5.3.2, 5.4 of the aforementioned Toolkit: <https://www.faef.eu/wp-content/uploads/Constitutional-Toolkit.pdf>.

One of the most difficult fundamental building blocks of a centripetal federation is the concept of vertical separation of powers, leading to shared sovereignty between the states and the federal body. It is this difficulty that has led to the widespread perception in Europe that federalisation means the transfer of sovereignty from the federated states to the federal body and therewith the loss of sovereignty. This persistent popular misconception is deftly played out by politicians who still live in nation-state advocacy with the Lisbon Treaty as its symbol.

With centripetal federalisation, Member States do not transfer sovereignty, let alone lose it. They make some of their powers dormant and entrust their application to the whole, the federal body. They lose none of their sovereignty. To put this in so many words, the Preamble to our Constitution states the following:

- (a) "that the federal system is based on a vertical separation of powers between the member states and the federal body through which the member states and the federal body share sovereignty;
- (b) (-)

III. Whereas, finally, without prejudice to our right to adjust the political composition of the federal body in elections, we have the inalienable right to depose the federation's authorities if, in our view, they violate the provisions of points I and II, '.

Point III leaves nothing to be desired in terms of clarity: if the federal body abuses the powers entrusted to it by the states, the people have the sovereign right to depose that authority. At that point, those powers cease to be dormant.

The formula 'vertical separation of powers, leading to shared sovereignty' can give rise to another misunderstanding, under the name 'shared powers'. This means that two persons or bodies are both competent to decide on the same subject. It is a fixed element in the Lisbon Treaty and, as a major source of conflict between Member States and the EU Institutions (primarily the EU Council and EU Commission), a fundamental systemic error. A simple example: if you and your boss have the power to decide on your holidays, a conflict quickly arises. The concept of shared powers lacks the element of responsibility: who is responsible for what? The EU understands very well that it is a systemic error and tries to circumvent it by claiming that by applying the principles of subsidiarity and proportionality - two political incantations - it does not unjustifiably disrupt the powers of Member States, but anyone with the courage to examine the Lisbon Treaty carefully will find a provision in Article 352 which gives the European Council the power to take any decision which, in the Council's opinion, serves the objectives of the Union. No subsidiarity, no proportionality. So, avoid at all costs the introduction of 'shared powers' in the constitution.

The big question with the vertical separation of powers is: how can constituent states that form a federation together entrust the federal body with some powers to look after their common interests? We will deal with that in Point 5.

4. Evolution of the European systems of states

Chapter 2 of the Toolkit mentioned in footnote 2 describes how, over four centuries, Europe has acquired successive systems of states - always after a crisis. Well into the Middle Ages, there was a system of kings, counts, dukes and other noblemen. They were constantly at war with each other. It is called the nobility anarchy. The Peace of Westphalia in 1648 brought an end to the Holy Roman Empire's 100-year war and the Eighty Years' War between the Netherlands and Spain. Then nation states emerged, with borders and citizens. But the fighting continued: the Napoleonic Wars, the wars between Germany and France, and two world wars. And many regional conflicts: nation-state anarchy. After 1945, the treaty system that has now developed into the European Union came into being in Europe. With the United Nations as its global counterpart. But just as UN member states can shirk their treaty obligations with impunity, so too can EU member states ignore the obligations of treaties and agreements when it suits their national interests better. European interests are not known: treaty anarchy.

This treaty anarchy, in which member states even ignore the authority of the European Court of Justice (in Hungary, Slovenia and Poland, but also Germany), points to an identity crisis of the EU system. This - coupled with the EU's meaningless geopolitical position - is causing the EU to falter. An identity crisis - marked by consuming more energy than saved for further life - is the final stage of an organization's life. A small incident can cause a serious crisis and then cause the EU organisation to implode or disintegrate.

The systemic analysis presented in Chapter 2 of the Toolkit is strongly supported by an economic analysis which points to an evolution towards exactly the same future of the European system of states. This is a book (2020) by Klaus Schwab, director of the World Economic Forum "Now is the time for a 'great reset'".² Schwab describes the evolution of economic systems - in four phases - towards a natural reform of the world economy, leading to a fundamental reshuffling of state systems. The importance of the similarity of our systemic analysis in the Toolkit and of Schwab's economic analysis leads us to briefly state the essentials of Schwab's view.

Schwab's description of the development of the global economy follows four social transitions/value additions, each triggered by a severe social and political crisis, caused by a dramatic shift in the value-added in production processes:

- 1.0: The value created by feudal society was the reclamation of land. As a result, the power lay with landowners: a small powerful elite of the rich.
- 2.0: The advent of nation states from 1600 onwards created value in the form of international trade. Some countries became - partly due to their slavery activities - very rich.
- 3.0: With the Industrial Revolution of the 18th century, the value-added of industrial production created an entirely new relationship between labour and capital.
- 4.0: In 2021, industrial production is no longer the main source of value-addition. Industrial companies are no longer at the top of the world's largest companies. They are now technology companies, investors, banks, and pharmaceutical companies.

² Bob de Wit, ex Schwab's book 'Covid-19: The Great Reset (2020)'.

At the heart of this is his view that the world is moving towards a new economic order. This necessitates a new political order - and a corresponding social (world) order - because the economic superpowers of the future (summarised as the tech companies, the banks, the investors and the pharmaceutical companies) operate as corporate-states: with their financial power they make the 'laws' that will apply globally and against which nation states - and also the European Union - cannot offer any counterweight. If state governments want to protect their citizens, then these states will have to merge into larger state associations that, just like the economic superpowers, must be able to offer protection to citizens of large parts of the world - and of the entire world itself. Schwab speaks of the need to replace nation-state thinking and acting with governing on the scale of the world: a 'New World Order'. A welcome message for federalists, but Schwab's book lacks the accompanying democratic order: an economic world order requires a democratic political order of the same level.

However, another concern when examining Schwab's analysis is the fact that in 2019, the World Economic Forum entered into a Memorandum of Understanding (MOU) with the UN to cooperate. It has been identified in the literature³ as a process in which the WEF and the UN are working towards a public-private partnership. Whether we would want to support that is the question. It would give the WEF a form of world-governance. Pushed by the most financially powerful companies and without any form of political responsibility.

Schwab's economic analysis should bring politicians to new insights. Whether this will succeed is the question. For this reason, FAEF Citizens' Convention is already working on a federal constitution for a federal European state system that will inevitably succeed the treaty-based state system. A democratic federale state that has enough political and democratic powers to counterbalance the immense upcoming economic powers.

The evolution of value-added systems is moulding social and political relations into new forms of living together and politics. As far as politics is concerned, political parties - whether within multi-party or two-party systems - face the task of reinventing the usual democratic system of representation of the people. The perpetuation of their current mode of operation will lead to their demise.

The balance of power between nation states and the companies that create the most value is rapidly changing in favour of the latter. The way the pharmaceutical industry determined what states - and also the European Union - could and could not do to combat the Corona pandemic says it all. The utility and necessity of national governance is fading and the pressure for the creation of transnational governance is growing rapidly. The corporate global powers are adapting less and less to national and European laws and treaties. As corporate-states they start to dictate the political and social relations. But they are not democracies. They have no political accountability, nor democratic feedback systems that offer protection to

citizens. Citizens can only receive this protection if politicians understand that they need to scale up to transnational state structures.

As long as politicians fail to see this, the transition to 4.0 will be accompanied by uncertainty, social unrest and unease (yellow jackets, violence against the police, attacking politicians, conspiracy theories), conflicts between states that want to use the growing power vacuum to return to their nation-state "[certainties](#)" and treaty leaders who do not know how to avert those conflicts. Let alone that those leaders know that it is now time to work towards a higher order state system.

Schwab's description that new economic powers will necessitate a comprehensive upscaling of current nation-state and treaty structures, supports the work we are doing with the Citizens' Convention. We also support his idea of the need to scale up the political system to a world order. In our terminology: a world federation. Only in this way can 'democracy' and 'political accountability' be saved in the 21st century. According to Schwab, if nation states do not take this step towards a higher order of cooperation - in our view, a federal order - they will no longer play a significant role in the near future. The corporate-states will then have and keep all the reins of power.

It is for this reason that the FAEF Constitution relies not only on the standard provisions of representative democracy, but also on forms of direct democracy. Not only 'direct democracy' in the sense of decision-making by citizens, but also, more broadly, in the form of provisions that provide for citizens to lead decision-making processes. These are revolutionary value-added additions to new-style large scale democracy. The Appendices II A and III A are compulsory reading in this context.

5. Appendix III A

5.1 The Common European Interests

Article III contains a concrete list of seven Common European Interests. In accordance with one of the federal standards, this list is limitative and exhaustive. And it can only be amended by a strict constitutional amendment procedure. This requires us to think very carefully about their name and meaning. After ratification of the constitution, they will be at the heart of the relations between the member states and the federation for a long time. The seven Interests of Article III must be matched with the proposals on those Common European Interests now in the Discussion Forum. This is therefore a request to the members of the Convention to bring those proposals into line with the seven Interests, or to adapt those seven Interests - with justification - to those proposals. We must all be convinced that the list is correct and exhaustive.

5.2 The application of the vertical separation of powers

It is not enough, however, to arrive at a balanced formulation of those seven Common European Interests. The citizens and states may require from us to formulate a procedure by which states that wish to become members of the federation - from the bottom up - indicate which powers they make dormant so that the federation can take care of the seven Interests with these powers of the states.

We have therefore designed a procedure in Appendix III A. The citizens play a leading role in this procedure, partly within the framework of a form of extended direct democracy. Thorough study of Appendix III A is therefore required.

Improvements are welcome. In view of the creative and disciplined way in which the members of the Citizens' Convention have designed improvements to the constitution so far, the board expects that this will also be the case with Article III.

We wish you wisdom in this week of rest between Christmas and New Year.

On behalf of the board,
Leo Klinkers,
President