Leo Klinkers & Herbert Tombeur

THE EUROPEAN FEDERALIST PAPERS



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Facts and Arguments for a European Federation

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Logo cover page: Lady Europe, © Jean Monnet Association Romania.

Behind Lady Europe: Rafael's famous 'School of Athens', featuring Plato and Aristotle.



CHARLES-LOUIS DE MONTESQUIEU,
1689-1755

”If there would be something useful for my country, but that is harmful for Europe, or if there would be something useful for Europe, but that is harmful to humanity, then I would consider that as a crime.”

WELCOME, FEDERALISTS AND ANTI-FEDERALISTS

Robert A. Levine – former high official of the United States Federal Government – wrote in the New York Times of 9 January 1999 an article entitled: “What the EU Needs Is a Copy of ‘**The Federalist Papers**’”. Levine made this remark at the start of the Economic and Monetary Union (EMU). He explained that in the quest for full economic integration, Europe could learn some useful lessons from the United States. This has not happened. Europe began an economic adventure without the support of a proper form of governance. The economic crisis in Europe has made the consequences of that shortcoming clear.

Now, over ten years after Levine’s call the European Federalist Papers (EFP) are here. A private initiative by three federalists: **Leo Klinkers**, **Herbert Tombeur** and guest author **Fernand Jadoul**. Bearing in mind the emphasis that Levine puts on ‘lessons’ we wrote the Papers consistently from best practices.

In 26 Papers we explain why the current operating system of the European Union is no quiet possession. Instead, it is driving the Union into an abyss. Therefore, this intergovernmental system should make way for a federal organization. To convince anti-federalists that this is no super state, we conclude the Papers with a design for a compact federal European Constitution.

We wrote the Papers between August 2012 and May 2013 and published them - one by one - in www.europeanfederalistpapers.eu. Over the months our website was visited by readers in more than hundred countries. In order to further the access to the European Federalist Papers we decided to publish them as well as an iBook, for free.

We are grateful for the comments and suggestions that we received during the writing of the 26 European Federalist Papers from August 2012 to May 2013. Thanks to you all. Your input is certainly a firm step towards a European Federation.

Five federalist friends deserve a special word of thanks. Firstly Peter Oomsels (Belgium), Vice President of **JEF Europe** who promotes tireless the reading of our EFP among the many JEF-members in and outside Europe. Secondly Matthias Darmell (Sweden) who used repeatedly the social media to disseminate each new Paper. Thirdly Jakub Jermar, who not only translated the EFP in his native language - Czech - but accompanied us throughout our writing with detailed questions and observations. Fourthly Alexandru Diaconu, President of the Jean Monnet Association in Romania, who took care of the translation in the Romanian language and of the design of the logo of this book: **Lady Europe**. We are extremely pleased that Alexandru permitted us to apply this excellent design as our cover page. Fifthly Wim Couwenberg (Netherlands), patriarch of constitutional law, who picked up the European Federalist Papers in its earliest stages, writing several positive comments on our work in his famous editions of 'Civis Mundi'.

Finally we would like to express out gratitude to David and Inge West-Klinkers, who provided the English translation of the Dutch text. And to Alex Appelius van Hoboken who took care of all website-related issues.





Leo Klinkers

The Hague (Netherlands)

April 2014

Herbert Tombeur

Mortsel (Belgium)

Klinkers & Tombeur, August 2012

PAPER 0

Klinkers and Tombeur explain why they find it necessary to start a dialogue on the desirability of a federal Europe. They broadly sketch the shortcomings of the European Union's current intergovernmental operating system. They explain why they put their dialogue in the form of the American Federalist Papers, a unique collection of writings from 1787-1788 relating to the draft of the Federal Constitution. Pro and anti federalists are invited to follow and respond to this series of European Federalist Papers.





CLINTON ROSSITER, 1917-1970

"And the message of The Federalist reads: no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality - and none of these great goods without stability and order."

Since 1999 we, Leo Klinkers and Herbert Tombeur, have discussed the desirability of a federal Europe. We believe that the current intergovernmental governance of Europe – useful and necessary to establish the European Community in the 1950s – has exceeded its shelf-life by far. Now, in the second decade of the 21st century, this operating system is becoming increasingly damaging to the concept of a common Europe. The system has lost its instrumental function for creating European cohesion and cooperation; through its inherent nationalist interests ('own country first') it goes against its original concept. We must go beyond this system. No longer can we afford to linger in a State concept originating circa sixty years ago, a form of organization that is no longer a quiet possession for Europe, which since then has – internally – changed immensely. The continent urgently needs to adjust its form of Government to the rapid – albeit remote – changes in Asia, Africa and South America. Or rather, as the President of the former Soviet Union, Mikhail Gorbachev, once said: *"He who is too late is punished by life."*

The banking crisis, followed by the economic crisis, seems to offer a chance to reinvent a European Community in the form of a federal or-

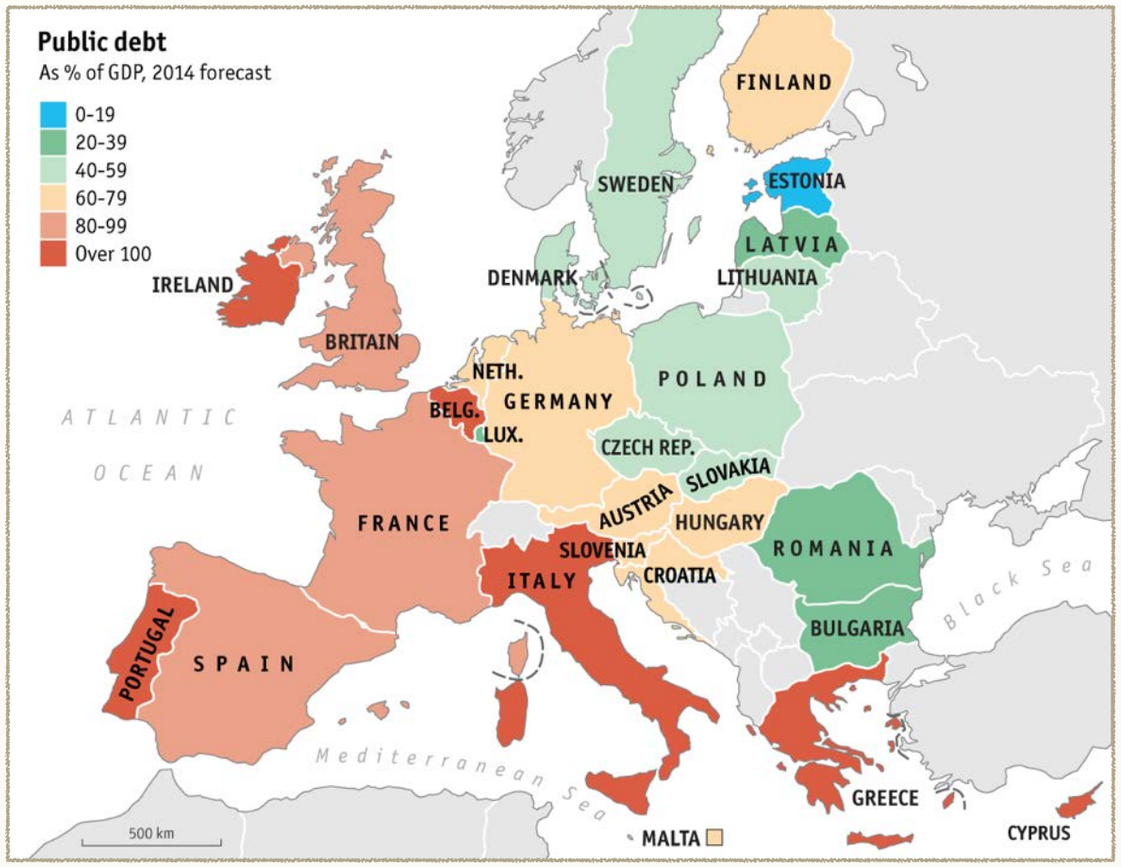
ganization. Although the resistance of the people against a federal Europe is manifest in many Member States, some top politicians in Europe seem to realize that the F-word cannot be circumvented for much longer. Without expressing in direct words the need for a political quantum leap – from intergovernmental to federal – in 2011-2012 European leaders are regularly expressing the need for more political 'integration', to provide a better basis for the established economic integration. However, they often use indirect, sometimes obscure words. What to say, for example, of a statement, made in 2011, by the Prime Minister of Luxembourg Jean-Claude Juncker – also Chairman of the Euro Group, a team of experts advising the EU Council of Ministers for economic and financial policy (Ecofin). In reaction to harsh societal criticism with regard to an indecisive Europe, unable to jointly take solid measures to base the Economic Union on a Political Union, he stated: *"We politicians know exactly what we should do, but if we would actually do this, we would lose the next elections."* A statement which is symptomatic of the European politicians' reluctance to openly advocate federalization – at the same time an indication of the inevitable: the federalization of Europe.

Of course there are politicians who without restraint advocate the European Union's federalization – for example, the former Prime Minister of Belgium, Guy Verhofstadt, now Member of the European Parliament; and Alexander Pechtold, former Minister for Administrative Reforms in the Netherlands, now leader of D66 in the Dutch Parliament. And there are – at this time (August 2012) – an increasing number of politicians advocating a Federation. However, they are at present outside the engine room where the controls of the governmental system are to be found. Thus, they are unable to create a lever to turn the intergovernmental system into a federal system.

Moreover, it would be incorrect to assume that only in the last two years, has the idea of a federal Europe been put – cautiously – on the European political agenda. Luuk van Middelaar describes in detail, in *Passage to Europe,* how – even long before the creation of the European Community in the early 1950s – philosophers and politicians put into words the need for a federal Europe. In a sense, then, in 1951 the Community began by leaning towards a Federal system, since the then created High Authority – responsible for the implementation of the common mining and steel manufacturing policies of the six participating States – possessed supranational jurisdiction. At least, this was the original idea in the proposal to set up such an Authority, based on the Schuman Plan of 1950, a plan with several federal aspects. In practice, this Authority was immediately controlled – even then, like the European Commission now – by the Council of Ministers; this Council only acquired its legitimate decision-making power by the Treaty of Rome in 1957. On that occasion, the High Authority was abolished in favor of the creation of the European Commission, losing as the Executive Body of the Union its alleged supranational power.

But still, there were constant federal initiatives. More than once we have noticed attempts to adopt a fully federal system. That process stopped a few years ago, when, as of 2004, the actual decision-

making power came in the hands of the European Council of Heads of State and Government. The decision-making – which due to this measure became increasingly driven by nationalistic tendencies – has split the thinking and acting in terms of one community so severely, that the externally incurred economic crisis has led to an internal economic crisis. With the façade of a long cherished European



The EU-economic crisis in terms of debt per state.

economic miracle disappearing, the cracks are now showing, along with the poor construction of the European House. That, and only that, is what motivates some politicians to approach the necessary reconstruction of that House with the help of a federal concept.

Would that crisis not have occurred, then they would not consider giving up the European Council as the overarching power center – something they would and will absolutely lose within a federal organization, in favor of restoring the sovereignty of the Member States.

We are convinced that a Federation of Europe (some day) will come. The question is whether it will happen as an evolutionary process, taking many years, or in a revolutionary style, in the sense that a few new crises will force the responsible politicians to eventually realize what had not been done in 1992, in the Treaty of Maastricht, namely to lay the foundations for a federal Europe.

Of course, a middle ground can be found, that of reason. The cause of the manifest resistance in many Member States – strongly fed by national parliamentarians who are aware that it is easy surfing on the waves of the populations' anxiety – is the lack of understanding of both the added value and the potential of a federal form of organization. Many politicians fuel the fear by characterizing a federal Europe as a juggernaut, a super State which will swallow national sovereignties and destroy regional cultures, habits and customs. This is entirely unfounded. It is the current intergovernmental control of Europe that is destroying these values by its inherent centrally imposed uniformity – which is to say, the policy that all communal decisions should be implemented in each individual Member State without exception. Conversely, it is exactly a Federation that preserves sovereignty for the associated States. If there is one thing that a federation protects and guarantees, then it is the sovereignty

of the entities that form the Federation. Almost no one is aware of this. The 'ordinary citizen' is fooled by people who let their provincial electoral interests prevail above knowledge and insight in the functioning of a federal form of organization. In the following, we will present Papers to explain this situation, and in the course of these texts we will tackle a number of other fallacies, taboos and misconceptions regarding a federal Europe.

The famous American Federalist Papers (1787-1788) by Alexander Hamilton, James Madison and John Jay.

The idea to put our European Federalist Papers in the form of a dialogue, an exchange of views on a federal Europe, is based on the American Federalist Papers. This is a series of 85 Papers written by Alexander Hamilton, James Madison and John Jay in 1787 and 1788 about the way in which the proposed Federal Constitution of the United States should be interpreted and why it should be accepted. These men are known as the founding fathers of the American Constitution. They wrote a majestic piece in political science, which serves as a fruitful source for many federalists. We will follow the form in which the Federalist Papers were written as much as possible. Why? The answer is simple: If you have to walk through a minefield it is wise to trace the footsteps of the person who safely reached the other side. In contemporary management terms: learn from best practices.

The Federalist Papers were written at the time of a serious crisis. North America knew, at that time, the organizational form of Government of a **Confederation** of States. From the Declaration of Independence (breaking the bonds with England) in 1776, thirteen States in North America formed a Confederation, slightly held together by a treaty under the title *Articles of Confederation*. Each State designed his own form of Government – a hodgepodge of very different models. After eleven years of performing as a State, and after many attempts to form a workable Confederation – without a superimposed authority above the States – the need arose to reflect thoroughly the strengthening the commonality. This need was filled by a Convention of Philadelphia in the summer of 1787, producing a draft of a Federal Constitution.
In September 1787 this was submitted to the American people with the intention of transforming the Confederation into a federal State based on a Constitution. If nine of the then thirteen States would accept this design, the Federation would be a legal fact. However, the opposition proved strong. Thus it felt like a serious crisis in the sur-

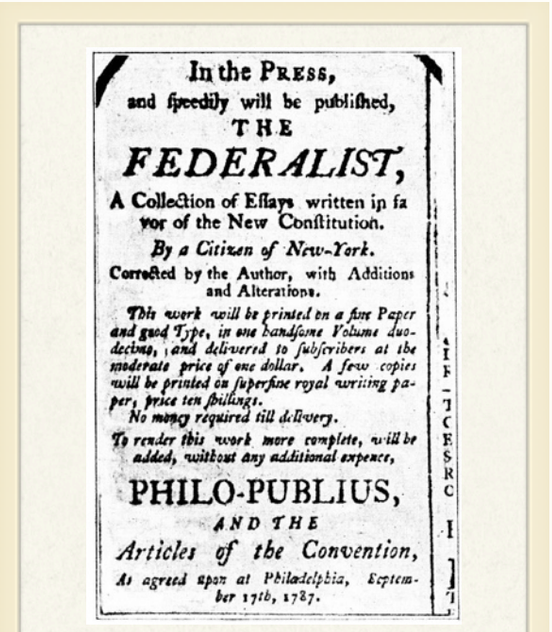
vival of this recently acquired independency. The opposition was strongest in the State of New York, led by Governor George Clinton. To reverse this opposition, on October 27, 1787 Alexander Hamilton began a series of Papers in favor of the Federal Constitution, describing the advantages and disadvantages, the strengths and weaknesses, of a federal form of Government. Along with John Jay and James Madison, under the joint pseudonym 'Publius', he published until August 1788 no less than 85 Papers in the newspapers of New

In old Rome many dozens of high ranking persons were called 'Publius ……' The 'Publius' of The Federalist Papers was supposedly Publius Valerius Publicola, consul about 500 BC, and one of the persons who managed to overthrow the monarchy, the beginning of the Roman Republic. Thus a kind of role-model for the founding fathers.

York. With success. The Federal Constitution was adopted in 1789. From that moment on the federal United States of America would gradually grow into the country that it is today.

We also know the sentiment of a crisis in present-day Europe. This can be worded in many different ways. We choose a quote from the Magazine *Knack*, by *Rik van Cauwelaert*, director of strategy: *"The current drama of the EU is that it is no longer carried by a binding idea. That binding idea was put forward and even funded, after the Second World War, by the US. But once the Cold War was settled, the European rulers believed the original project of Jean Monnet – an Atlantic community (...) – could be aborted. Today, the EU is a notional Union, with many intergovernmental wranglings, which only seems to exist to maintain the Eurosystem and the banks."*

Europe has to choose between perpetuating the current intergovernmental cooperation or opting for a federal form of Government. Of course, there is also a third possibility: dissolution of the European Union, with each State going forward alone. However, this last perspective we consider unthinkable, since a return to State-nationalism could not survive in a world of increasing globalization. Or could it? The reality of the situation compels us to note that at the start of writing these European Federalist Papers, summer 2012, the chances of the European Union's survival are estimated at fifty-fifty. We will see.


In the PRESS,
and ſpeedily will be publiſhed,
THE
FEDERALIST,
A Collection of Eſſays written in fa vor of the New Conſtitution.
By a Citizen of New-York.
Corrected by the Author, with Additions and Alterations.
This work will be printed on a fine Paper and good Type, in one handſome Volume duodecimo, and delivered to ſubſcribers at the moderate price of one dollar. A few copies will be printed on ſuperfine royal writing paper, price ten ſhillings.
No money required till delivery.
To render this work more complete, will be added, without any additional expence,
PHILO-PUBLIUS,
AND THE
Articles of the Convention,
As agreed upon at Philadelphia, September 17th, 1787.

An advertisement for The Federalist, 1787, using the pseudonym "Philo-Publius". Published in 'The Independent' and in the 'Daily Advertiser'.

It is remarkable that a serious crisis needs to occur before the errors inherent in the construction of the European building are being recognized. With some knowledge of political forms and history, in 1950 the European Coal and Steel Community's (ECSC) founding fathers could and should have chosen for a full federal organization: if one wants to preserve the Member States' sovereignty while at the

same time uniting these States, then a federal construction is the only suitable form. This is no (party) political position, this is science. How is it possible that Europe, which has produced many political wise men and women in the course of more than twenty centuries, only at the start of the 21st century, is understanding what North America at the end of the 18th century already understood (hardly three centuries after its discovery by Columbus, and without a substantial amount of political sages): a Confederation creates a seeming sovereignty of the whole, a Federation is actually guaranteeing sovereignty of both participating States and of the whole. We will explain this position in these Papers.

The similarity with the crisis of America in the year 1787 served as the impetus to our year-long dissatisfaction regarding the European Union's governmental form to initiate these Papers. We feel legitimized to do so by a call from Robert A. Levine – former high official in the US Federal Government and best known of the *War Against Poverty* – in an article in the *New York Times* of 9 January 1999 under the title: *"What the EU Needs Is a Copy of 'The Federalist Papers'"*. Well, here they are. In all modesty. Because we do not have a well-considered opinion about everything, let alone the level of reflection displayed by the authors of The Federalist Papers, we may ask other writers to assist us.

The political reality of 1787 did not have time for The Federalist Papers. However, during the intense debates they would gradually grow into a major stepping stone serving to cross the wild political river safely from the Confederal bank to the Federal bank. As a prestigious proposal for a Federal Constitution these Federalist Papers played their part, along many other publications, for a conclusive design of the Federal Constitution. The fame of this opus was established during the later history of the United States, gradually turning into one of the main sources for interpreting the Constitution.

Our Papers may drown in the sea of opinions about a federal Europe. And whether they will ever be a source for thinking about a federal Europe is a thought we do not contemplate at this moment. Expressing our own feeling of responsibility is the only motive to write what we believe. Silence is consent, a consent that implies accepting that intergovernmentalism will be leading Europe to its downfall. We do not want to be complicit. Therefore we oppose to the intergovernementalism supported by the ruling of the French scientist Henri Poincaré (1854-1912): *"Thinking must never be subjected, nor to a dogma, neither to a party nor to a passion nor to a prejudice, nor to anything, but only to the facts themselves, as subjecting to something means the end of all thinking."*

Just as the American Federalist Papers, we number each of the European Federalist Papers. But unlike the Federalist Papers we won't choose a joint pseudonym. Each author's name is mentioned above the actual paper. We do this also to avoid a curious debate after the closure of The Federalist Papers: right before his death, Hamilton claimed to have written 63 of the 85 pieces, which was clearly incorrect. The people who took an interest in this topic, would debate for generations about the authorship of these American Papers. At present, there is more or less agreement on who wrote what. To give the

reader insight into the development of our Papers throughout 2012, we have also indicated the month on each Paper.

We would like to publish our European Federalist papers in newspapers throughout the seventeen countries of the Eurozone (the States carrying the euro) – just as has been the case with the American Federalist Papers, which were published in the newspapers of New York City. However, this proved unfeasible. Therefore, we choose another low-threshold form of publishing: we will publish the Papers one by one, or in small cohesive groups, on this website. We will communicate the presence of those Papers by social media, in the hope that the readers – by forwarding our messages – will create an increasing audience throughout Europe, and providing us with proposals for improving this line of thinking about federalizing Europe.

Finally, to stress the importance of Europe's federalization, we quote the final sentences written by Clinton Rossiter in the introduction of his February 15, 1961 edition of The Federalist Papers:

> *"And the message of The Federalist reads: no happiness without liberty, no liberty without self-government, no self-government without constitutionalism, no constitutionalism without morality – and none of these great goods without stability and order."*

Leo Klinkers and Herbert Tombeur
The Hague (Netherlands) and Mortsel (Belgium), August 2012

Klinkers, August 2012

PAPER 1

Here the dialogue starts. Klinkers opens with three Papers. In Paper No. 1 he points out why he considers the current intergovernmental form of Government inferior to a federal system. In the existing European Union the national interests of the Member States prevail. Persisting within this construction will, in his opinion, lead to the disintegration of Europe. Only a federal organization can keep Europe together. He asks Tombeur to challenge, to improve or to confirm his statements in later Papers. Klinkers consistently draws from historical references of thinking in terms of federal forms of organizing.



Plato & Aristotle

FAQ 1: What is a federation?

This is an organization in which the members remain autonomous and sovereign, while ceding a limitative number of powers to a separately functioning body, so that this body can take care of all interests that the members cannot (or no longer) take care of individually. This body for the whole is sovereign with respect to these limitative set of powers but does not possess top-down hierarchical powers. Thus, both levels of governance operate in a sovereign manner. They share sovereignty for the whole and for the members of the organization, for instance the federated member states. This system can only be changed upon the agreement of all governments, of the members and of the whole.

See Papers no. 2, 5-8 and 10.



GUY VERHOFSTADT

" European summits have degenerated to an arena where points should be scored in the country's own interest. Only now and then you hear still convincing interventions in defense of the European general interest."

Esteemed Tombeur, I feel the need to substantiate our conversations on federalizing. I am a confirmed European federalist. However, if someone asks me to argue this statement, then I quickly reach the end of my words. And you know one of my truisms: *"Everyone can talk, but if you can't write it down, then it does not count."* So it is time to base my position on convincing facts and arguments. A documented quest for the Why of a federal Europe. And thus also an exploration of the How: what constitutional and institutional form can such a Federation have and how do you get the majority of the European population in favor of a federal Europe?

You are schooled in the essence of federalization. I would appreciate it if you would help me with navigating a path through the jungle of facts and arguments that argue in favor of a European Federation, or that you would indicate arguments that we must abandon that idea.

I will first tell you why I think the European Union's current intergovernmental operating system can no longer serve as the form of Government of the Union. Then I will describe what a federal form of Govern-

ment in essence is. Please tell me then what I see wrongly or interpret badly; or how my position could be substantiated with better facts and arguments.

I propose that we divide our dialogue into large blocks. First we dive into the history, by placing the concept of federalization in a historical context, explaining the essence of a Federation and why – on the basis of facts and present-day arguments – a federal organization would be preferable above the current intergovernmental system of Government. From there we should talk about various legal and organizational aspects, since the constitutional and institutional elements will also occupy an important place in our thinking. Aren't we obliged by our legal backgrounds to design a Federal Constitution for Europe? Simple, compact and in no way resembling the legal monster which goes by the name of the Treaty of Lisbon; embedding our considerations in a cultural context, and that of State- and nation-building and societal appreciation – in favor or in opposition – for the federalization of Europe. Our writings might occasionally overlap one another, but we will see how we handle that.



Gathered for signing the Treaty of Munster, one of the two treaties to establish the Peace of Westphalia

For a responsible commentary on the current European operating intergovernmental system I should go back to the Peace of Westphalia of 1648. This ended the 'thirty years war' within the former Holy Roman Empire and the 'eighty years war' between Spain and the Republic of the seven United Netherlands. Formally, the Peace of Westphalia was settled by one peace accord and two treaties: the Peace of Westphalia on 30 January 1648 between the Netherlands and Spain, followed by the Treaty of Münster and the Treaty of Osnabrück simultaneously on 24 October 1648. The Treaty of Münster established new relations between the Roman Emperor Ferdinand III and France with its allies. The Treaty of Osnabrück established new relations between Ferdinand III and Sweden with its allies.

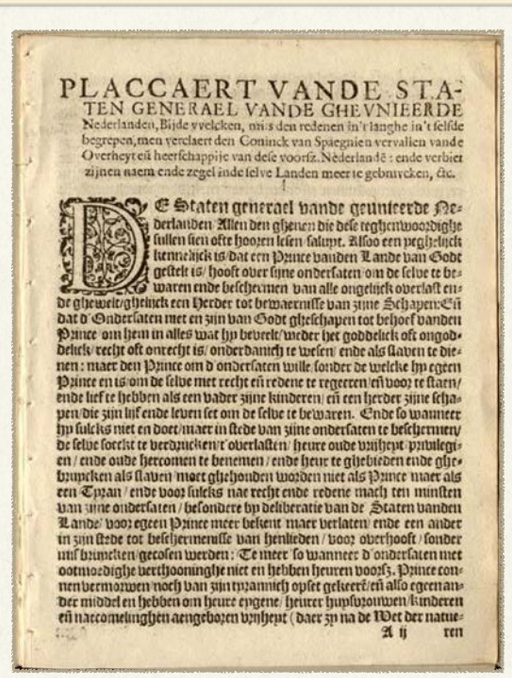
Apart from the joy surrounding the end of the prolonged, inconceivable bloodshed, 1648 demonstrates an essential turning point in State-thinking. It is the birth certificate of the concept of sovereignty and thus of State- and nation-building. 'Rome' was, until then, not only the primary religious force in the world, but also the secular driving force. That stopped in 1648. With the peace-by-treaty individual States were granted sovereignty within their own borders: master of their own house. No longer had

any State the right to invade, or to demand accountability from another country. Equality between States became the watchword. Balance of power between European States, irrespective of the question to what extent the boundaries between those States were drawn in a realistic manner. It also marks the arrival of diplomatic relations in a context of international law.

It would be incorrect to state that this was the first time that the notion of 'sovereignty' was used. William of Orange had previously told the Spanish conquerors that the parts of the Netherlands that had entrusted themselves to his care, were sovereign. However, his statement had only political significance, not yet backed by international law – just as the Declaration of Sukarno and Hatta, immediately following World War II in 1945, was supposed to create the sovereign Republic of Indonesia, independent of the Netherlands. This



William of Orange, founding father of the Netherlands, initiator of the 'Plakkaat van Verlatinghe' ('Declaration of Independence'), July 26th 1581, the declaration that the Netherlands no longer accepted the Spanish King as their ruler.



PLACCAERT VANDE STA-
TEN GENERAEL VANDE GHEVNIEERDE
Nederlanden, Bijde ghelicken, mits den redenen in 't langhe in 't selfde
begrepen, men verclaert den Coninck van Spaegnien vervallen vande
Overheyt eñ heerschappije van dese voorts. Nederlandē: ende verbiet
zijnen naem ende zegel inde selve Landen meer te gebruycken, &c.

DE Staten generael vande geunieerde Nederlanden Allen den ghenen die dese tegenwoordighe sullen sien ofte hooren lesen salupt. Alsoo een yeghelijck kennelijck is dat een Prince vanden Lande van Godt gestelt is/ hoost over sijne onderlaten/om de selve te bewaren ende beschermen van alle ongelijck overlast ende ghewelt/ghelijck een Herder tot bewaernisse van zijne Schapen: Eñ dat d'Onderlaten met en zijn van Godt gheschapen tot behoef vanden Prince om hem in alles wat hy beveelt/wederr het goddelick ofte ongoddelick/recht ofte onrecht is/onderdanich te wesen/ende als slaven te dienen: maer den Prince om d'onderlaten wille/sonder de welcke hy egeen Prince en is/om de selve met recht eñ redene te regeeren/eñ voor te staen/ende lief te hebben als een vader zijne kinderen/ eñ een herder zijne schapen/die zijn lijf ende leven set om de selve te bewaren. Ende so wanneer hy sulckis niet en doet/maer in stede van zijne onderlaten te beschermen/de selve soeckt te verdrucken/t' overlasten/ heure oude vryheyt/privilegien/ende oude hercomen te benemen/ende heure te ghebieden ende ghebruycken als slaven/moet ghehouden worden niet als Prince maer als een Tyran/ende voor sulckis nae recht ende redene mach ten minsten van zijne onderlaten/besondere by deliberatie van de Staten vanden Lande/voor egeen Prince meer bekent maer verlaten/ende een ander in zijn stede tot beschermenisse van henlieden/voor overhooft/sonder uitbreken gecosen werden: Te meer so wanneer d'onderlaten met ootmoedighe verthooninghe niet en hebben heuren voorz. Prince connen vermorwen noch by zijn tyannich opset geleeert/eñ alle egeen ander middel en hebben om heure eygene/heurer hupsvrouwen/kinderen eñ nacomelinghen aengebozen vryheyt (daer zy na de Wet der natu-

A ij ren

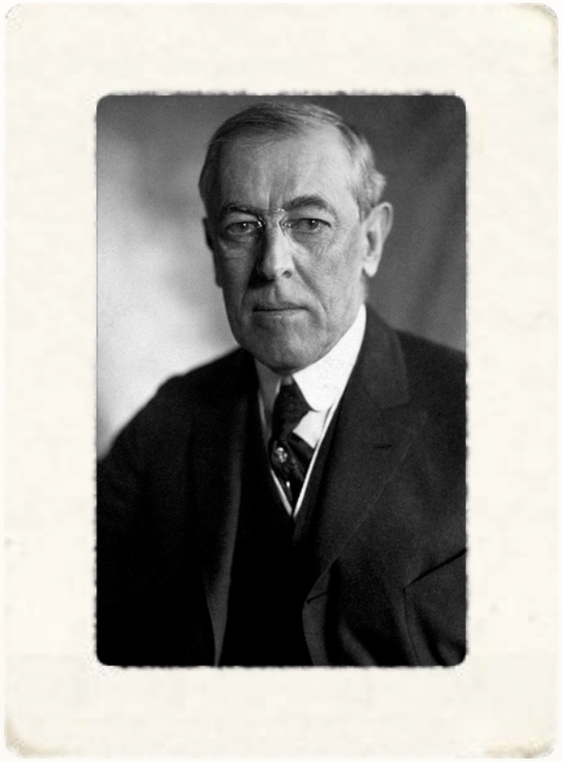
This 'Manifest of Leaving' the Spanish empire has inspired James Madison (when introducing the Bill of Rights 1789) to say: "All power is originally vested in, and consequently derived from, the people... The people have an unalienable right to reform or change their government, whenever it be inadequate to the purposes of its institution".



This 'Declaration of Independence' inspired the American Declaration of Independence 1776. At the occasion of the Nuclear Security Summit (March 24th 2014 in The Hague) President Barack Obama visited the Rijksmuseum in Amsterdam to see this manifest, accompanied by Prime Minister Mark Rutte.

legal and internationally recognized sovereignty was not reached until the end of December 1949, by the conclusion of a Treaty in the Hague, establishing the Federation of the United States of Indonesia. This was against the wishes of the Javanese Sukarno, who had always fought for a Unitarian State. Thus, a week after the Treaty in The Hague, he began to dismantle the federal system, giving the Moluccans, who were member of the sovereign South Eastern part of the Federation, reason to answer Sukarno with the Proclamation of their own independent State, Republik Maluku Selatan (Republic of the South Moluccas, RMS) on 25 April 1950. Mid-August 1950 Sukarno succeeded in the dissolution of the Federation. From that moment onwards Indonesia became a Unitarian State and the Moluccans became the losing party, geopolitically. I find this a necessary parenthesis, because this Indonesian story raises questions that are relevant to me in our correspondence about Europe – for example, with respect to the question whether a Federation can have several centers of power versus a unitarian state with only one centre of power. Furthermore, this example seems important in the light of a question that has been bothering me for years, namely whether more federations have failed. Maybe you could elaborate on this in the course of our work?

This concept of the Westphalian sovereignty would last about three hundred years, until 1945. There were wars between 1648 and 1945, despite every nation being master of their own house. But in the last tremendous world conflict, World War II, the crisis was so severe that all more or less failed previous attempts to achieve a sustainable world peace – including the League of Nations of 1919, the initiative of US president **Woodrow Wilson** – disappeared into the background, due to the creation of the successful United Nations, supported by the Charter of the United Nations (UN) in June 1945.



President Woodrow Wilson, founding father the League of Nations (and of the Federal Reserve Bank).

This was a new turning point in State-thinking. The hesitant steps from the League of Nations to make agreements about mutual rights and obligations in the form of treaty-based international organizations, put an end to the 1648-Westphalian concept of sovereignty.

Let's be clear about this, as of 1945 the 1648 type of sovereignty no longer exists. Since the United Nations was established, a large number of international organizations have been created at an incredible pace – many of them under the umbrella of the UN, but also many outside this. Although each of the 190 countries or so in the world claims to be a sovereign State, this is – within the original meaning of that word – for more than 50 years no longer the case. Each country that is a member of a treaty or of an international body is held accountable for its actions within the context of that treaty or membership.

Moreover, with a UN mandate, the UN soldiers, the so-called Blue Helmets, can invade any country guilty of a serious violation of the Charter. So much for sovereignty.

Thus sovereign States – such as referred to in 1648 – no longer exist since 1945. The claim that a federal Europe robs its Member States of their sovereignty, is therefore nonsense. They have long ceded in full awareness an important part of their sovereignty. Why? Because the group is greater than the sum of its parts. That is why Europe, as of the 1950s, steadily worked on the creation of what is now the European Union, an international organization of high standing. However, as you and I will explain: anno 2012 that Union is 'clinically dead'.

The question is: how should we interpret the constitutional position of the countries that belong to international organizations? For this position a new legal concept has been created: the intergovernmental system. In short, intergovernmentalism is a specific way of decision-making within international organizations. That type of decision-making grants exclusive power to the affiliated member States, which in principle decide unanimously. In other words, States within an intergovernmental system do not have a controlling body above them. Where that is the case (a controlling body above) we usually speak of a supranational organization. In the European Union – just as is the case with most international organizations – the emphasis is on a high degree on intergovernmentalism, larded with embers of supranational decision-making. Mainly, the heads of Government of the Member States decide, within the European Council, what has to happen within the European Union. The Member States have created a strong bond by addressing common interests, but when push comes to shove they can step out of that cooperation, or be put out. Therefore, strictly speaking, the intergovernmental system is close to a Confederation; especially also due to the fact that in 2005 the legal basis of their bond was not allowed to be called a Constitution. The intergovernmental character of the European Union is based on the Treaty of Lisbon, signed in 2007 and in force as of 2009. Despite the efforts to make it look federalist, it still has the typical basis of a Confederation.

The intergovernmental decision-making takes place within the context of the European Council, the heads of Government, and councils of specific Ministers. And here is the rub. The heads of Government within the European Council, along with the separate councils of Ministers approach, more than ever before, the international decision-making table with a national agenda in their pocket. This process started surreptitiously after the Maastricht Treaty signed in 1992, when a Dutch attempt to lay the basis for a federal Europe was flat out rejected. If this, as is claimed, had to do with a quarrel between Helmut Kohl and Ruud Lubbers on the reunification of East Germany and West Germany should be excluded here. The fact is, however, certainly after the introduction of the euro currency, ten years later, that the anti European Union feelings are gradually strengthened and no Government leader manages to get from his people or Parliament the mandate to behave in Brussels as a European: own country first is the slogan. In the words of Guy Verhofstadt in his book *The United States of Europe*: *"European summits have*



Euro-skepticism and Euro-hate: burning the EU-flag.

degenerated to an arena where points should scored in the country's own interest. Only now and then you hear still convincing interventions in defence of the European general interest."

I am sorry to say that I, as a Dutchman, must unfortunately acknowledge that precisely my country is showing, since the introduction of the euro, skepticism and even shameless aversion by its leaders towards the European Union. The newspaper de Volkskrant of 4 August 2012 describes in clear terms, under the title *The European patience with asshole Netherlands comes to an end*, how Prime Minister Mark Rutte is performing within the European Council: braking hard when it comes to more political integration. Not something to be proud of if you take into account that the Netherlands for many decades were known in the world for their avant-garde mentality.

This state-nationalistic virus has spread throughout the European Union: the mentality of 'own country first' is unfortunately not only performed by the Netherlands. It is common to all countries. Therefore, around intergovernmental decision-making, is the lingering smell of permanent loss, the typical byproduct of protectionism. If you have to cut down on your national agenda in favor of a greater general interest, you always return home as a loser. And even if the national Ministers score any success, then they claim that as a token of their merit, not those of Europe, while every disadvantage for their own State is attributed to the Union. This is eating away at the credibility of the Union. National parliaments and societies, whether or not stirred up by EU-critics, are blaming the heads of Government that more and more national sovereignty is handed over – without realizing that the original Westphalian sovereignty no longer exists. European decision-making must be far-reaching, especially now that the eurozone is at stake, but the space that Government leaders get of their own countries is limited.

This will inevitably go wrong. The European Union is being eaten away from within. And that is caused by the actual structure of the intergovernmental system. At least at present. It started successfully in the 1950s, because another decision-making model was unavailable and because the need to make daring decisions by heads of Government was obvious, the intergovernmental operating system of that time was not to blame. The achievement of economic integration was a great step. Only when in 1992 the choice between deepening or enlargement, and the need for political unification came to or-

der, as a necessary stronger foundation for the Economic Union, the intergovernmental operating went from bad to worse: it lost its instrumental function to European cohesion. When the step had to be put to an organization model that economic integration could be sealed with a political Union, the responsible statesmen backed off. From that moment on the system no longer functioned. Moreover, the heads of Government have since then travelled on the wrong path of the intergovernmental decision-making in the wrong direction. Eventually resulting in the negative referenda in France and the Netherlands in 2005: denouncing strongly the draft of a federally tinted European Constitution, requiring to transform that draft into an intergovernmental Treaty (read Confederal): the Treaty of Lisbon.

As a result, we now have in the European Union no fewer than four persons who may argue that they are President of the European Union: the President of the European Parliament, the interim President of the European Union, the President of the European Commission and the President of the European Council. Who could ever create a situation like that? What organization can cope with this?

Even worse: the actual decisions are taken by the heads of Government of Germany and France, while having no formal powers to do this. It could not be any stranger. This is highlighted by the fact that the President of the United States does not know who to contact within the European Union.



The current (2014) three (of four) Presidents of the European Union: Van Rompuy (President European Council), Barroso (President European Commission) and Schulz (President European Parliament).

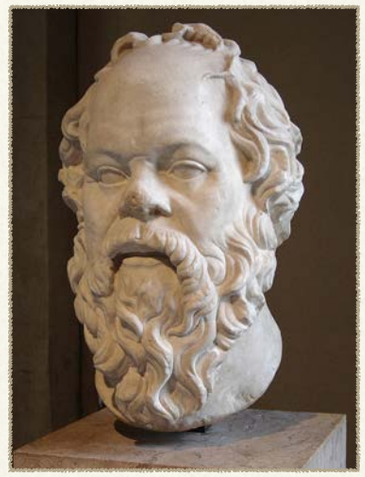
After all, the half-hearted decision-making to combat the economic crisis says enough. This operating system has an inbuilt process of reinforcing 'Verelendung' (deterioriation). That manifests itself, among others, by answering each new failure with more rules and measures, the archetypal reaction to the break down of an administrative system.

My statement is thus that we can only end this downfall of European intergovernmental decision-making by eliminating the intergovernmental operating system completely, in favor of a European Federation.

Klinkers, August 2012

PAPER 2

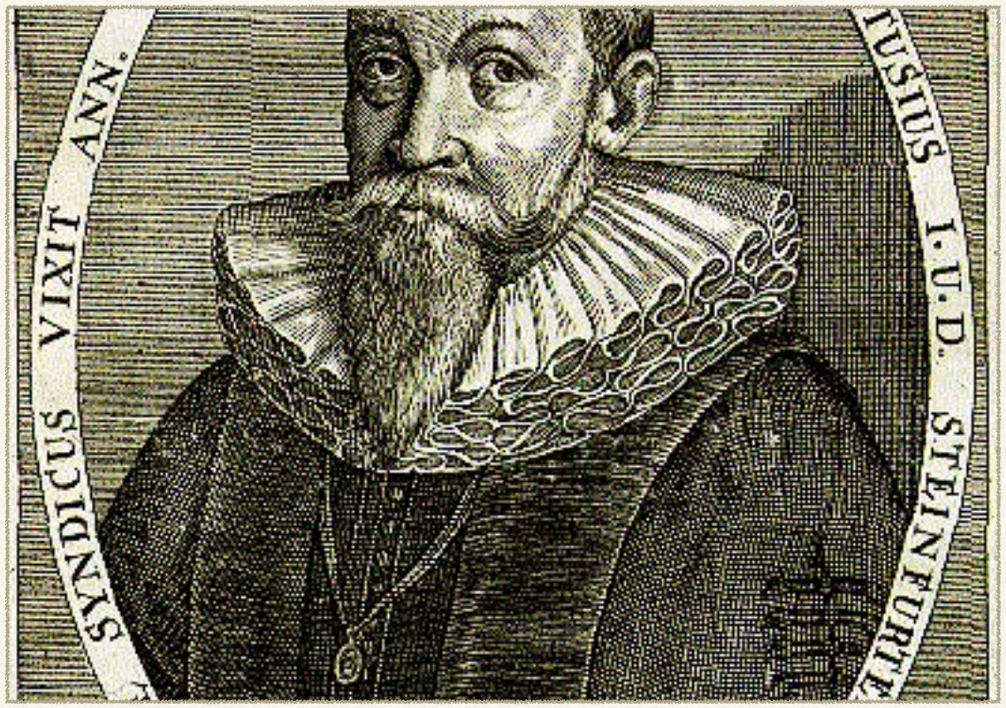
This Paper deals with the question what belongs to the essence of a federal organization. Klinkers describes this on the basis of what he has learned over the years by Tombeur. He raises a number of questions with the intention to get his thoughts about federalism improved or supplement by Tombeur.



Socrates

FAQ 2: What is an intergovernmental governing system?

It is a system in which member states cooperate on the basis of a treaty and to that end cede powers to a central body. Although this seems to be similar to a Federation, the difference is that in an intergovernmental system member states lose their sovereignty due to the fact that the central body makes compromises between the interests of the different member states while forcing, time and again, in a hierarchical manner, a uniform way of operating: centrally imposed uniformity. Notwithstanding the treaty's concept of subsidiarity, which should work as a shield against centrally imposed government, but does not work. See Papers no. 1, 2, 4 and 10.



JOHANNES ALTHUSIUS, 1557-1638

The word 'polity' has three principal connotations, as noted by Plutarch. First it indicates the communication of right (jus) in the commonwealth, which the Apostle calls citizenship. Then, it signifies the manner of administering and regulating the commonwealth. Finally, it notes the form and constitution of the commonwealth by which all actions of the citizens are guided. Aristotle understands by polity this last meaning.

What then, esteemed Tombeur, is a Federation? On that subject, I have learned a lot from you. Let me summarize what, in your view, are the constituent components of the federal concept. In the following I will state in my own words what you have written over the years relating to the essence of a federal organization. You have also taught me not to speak of a federal Government or of a federal State, but of a federal Organization. In your opinion one does not need a State, with an army and a police force, when speaking about Federalization. In essence, we should speak of a federation as a specific organizational form of cooperation. I would like you to explain this, because the average reader will easily associate the concept of federalization with the concept of State. When thinking of a federal Europe he or she will associate this with the United States of Europe. Not with the United Organization of Europe.

In the same manner as I drew from the 1648-peace of Westphalia as the basic form of the legal concept of ‘sovereignty’, you draw from the 17th century, in order to sketch the first contours of federalism.

You regard **Johannes Althusius** (1557-1638) or Althaus as the founder of the federalist theory. Are you alone in this point of view or do others share this opinion? His work of 1612 - *Politica Methodice Digesta,*

Atque Exemplis Sacris Et Profanis Illustrata - describes the foundations of society, consisting of individuals and groups living together on the basis of formal and informal contracts: co-existence and cooperation, with respect for the identity and autonomy of each group. A Contract is different from a Covenant. A Covenant implies a compromise. That is typical of what would become a primary feature of a Confederation. Living together on the basis of a Contract implies having a vision of that society in the context of a State that guarantees coherence among, and sovereignty of subgroups.

Then you state that Ludolph Hugo, with his writings 'De statu regorum Germania' (1661), is in line with Althusius. Hugo distinguishes three types of States: Confederations (thus autonomous States act communally in some areas on the basis of a Treaty), decentralized States (States that decentralize their authority to lower communities, which is the case with the provinces and municipalities in the Netherlands since 1850/1851), and Federal States. From everything I have read about federalism, I deduce that the two most characteristic aspects of a federal system are: governance and sovereignty of both the whole and its parts. Although 'double' governance presupposes a hierarchy between the two levels, this is not the case in a Federation – in this it is different from a decentralized Unitarian State such as the Netherlands. In a Federation the federal Government possesses statewide powers. The component States have powers that apply only to their State. And those powers do not compete with each other, nor do they exclude one another.

This resembles what we know in the Netherlands as the Association of Owners for residents of an apartment building, a condominium. Every resident is, within his own house, sovereign with respect to the way in which he or she wishes to live: with or without a carpet, with a couch or camping furniture, sleeping until noon each day, deciding on whether or not to follow a vegetarian diet, whether or not to give the children a Christian education et cetera. However, the care of the roof of the building, the maintenance of the elevators, the heating, the water and the cleaning of the stairwell, are all matters of common interest. The individual occupant cannot and is not expected to deal these common aspects. For

The Politics of Johannes Althusius

An abridged translation of the Third Edition of

POLITICA METHODICE DIGESTA, ATQUE EXEMPLIS SACRIS ET PROFANIS ILLUSTRATA

And including the Prefaces to the First and Third Editions. Translated, with an Introduction by FREDERICK S. CARNEY. Preface by Carl J. Friedrich.

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the costs of these, an amount (service costs) is charged, managed by a board, elected by all owners, deciding on the implementation of the common interests. The same is true of any changes in the set

Federal state structure



Slideshow about the structure of a federal state, preserving the sovereignty of each member state.

of powers of that board. No hierarchy: the board has nothing to do with what you do within your own home. In essence, this reflects a federal organization.

On the other hand, the intergovernmental system is hierarchical. That system prescribes – so to speak – that everyone should have a shower at 08.00 o'clock, for no longer than five minutes, and have a vegetarian meal every Monday. It is precisely this top-down hierarchical nature of intergovernmentalism that provokes the type of resistance against Europe that we have seen growing over the last ten years. And because hardly anyone knows what a Federation really is – at this point there is a bewildering amount of misinformation and nonsense on the subject – it takes only one incompetent politician/professor/journalist to associate 'Federation' with 'Superstate', for the trouble to start.

Finally, you mentioned that the American political scientist Preston King cultivates these basic characteristics of a federal administrative organization or Federation, in other words, a structured application of the concept of federalism. King defines federalism as a constitutional agreement that takes the form of a sovereign State, differing from other States due to its sovereign central administration involving regional units in the sovereign decision-making process on a constitutional basis. According to him, the constitutional basis of the whole (the Federation), the autonomy of its constituent parts (territorial or functional) with their own decision-making power (self rule) and the participation of those parts in the decision-making process for the whole (shared rule), are the essential characteristics of a federal administration.

Therefore, I would like to adopt the following as distinctive elements of a Federation. A Federation represents:

a. autonomy in the sense of sovereignty of the whole, the Federation as such;

b. autonomy in the sense of sovereignty of the parts making up the Federation, the Member States;

c. the competence of the whole, the Federation, to take common interest decisions applying to everyone, so for all the inhabitants of the Federation;

d. the competence of each of the constituent parts (the Member States) to take decisions applicable only within that part of the Federation;

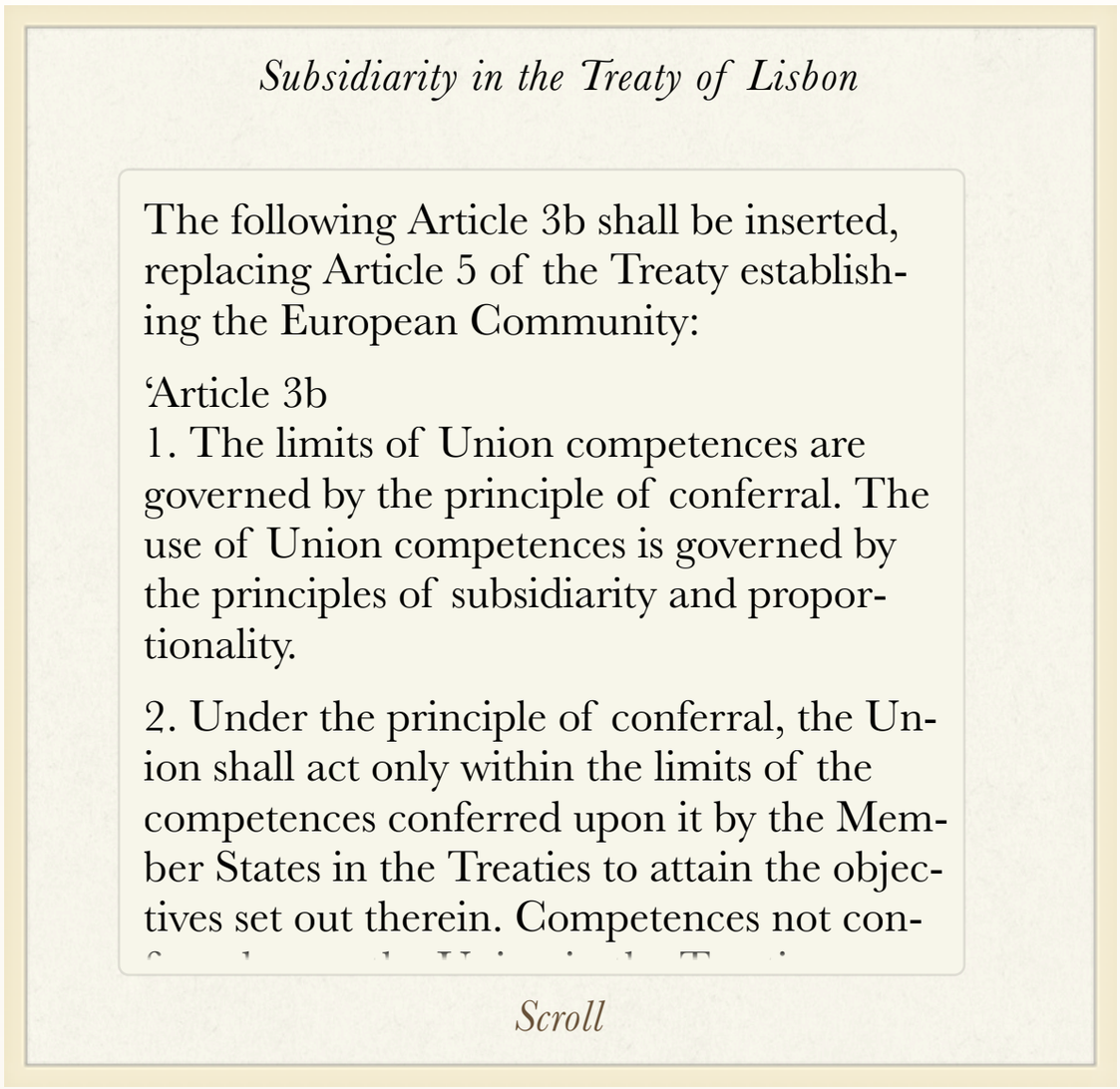
e. the self-evidence that one Member State may decide something entirely different from another Member State – we see that, for example, in the United States, where in addition to the federal tax system the States can levy their own taxes, and in Germany, where every State (the Länder) has its own education system;

f. a decision-making attitude that starts at the basis of society. This implies a continuous effort towards a small, not dominant, centralizing Government with strong Member States; this always creates tension, especially if, when circumstances change, federal Government tends to usurp more powers as seems to be happening in the United States at the moment;

g. the same institutional structure applies to both the whole and the constituent parts, with each their own Parliament, their own Government, their own Judiciary. The constituent parts, the Member States, have influence within the central Parliament, but not vice versa.

I would like to hear from you whether this is true. Is this sufficient, or should there be more? Can it be better formulated in a different way? In this initial stage of our dialogue, we must be clear about definitions and descriptions. What still puzzles me, among other things, is the question whether the idea of Althusius, namely a Contract of society as the basis for a federal system, is in line with the contemporary view that a Constitution, not a Contract, is the connecting element for a Federation. For a Confederation this is a Treaty. While the binding of States within. Or should I not take (the difference between) those words too seriously?

On point e) we must return to later, because if there is one misunderstanding about a federal Europe, it is the assumption that in the event of a federal organization everything in every European State must be the same. This is absolute nonsense. It is precisely the intergovernmental decision-making that creates centrally imposed uniformity. Doing this so powerfully that the so-called principle of '**subsidiarity**' (EU-measures should be taken only if the Member States cannot regulate something themselves) is reduced to almost zero. I think that this explains why the United Kingdom is still not entirely connected to the European Union. That country attaches great value to having and keeping its own peculiar habits. The current intergovernmental approach forces them to keep the European Union at arm's length. And unfortunately many Brits believe that this will get worse with a federal Europe. This is an incorrect viewpoint. If there is one thing that proves the power of a federal organization, it is the possibility of granting coexisting powers to



its constituent parts and to the composite whole. Thus, a member State in a federal form can have its own tax system, its own education system, its own environmental system, et cetera. This guarantees entirely the preservation of the individuality of each society with its own legal and organizational frameworks.

With respect to point f) you understand that I feel completely at ease since the first part of my trilogy on result-oriented policy making, carries the title '*Beleid begint bij de samenleving*' (*Policy-making starts with society)*. However, if we look at the Federation of federations, the United States of America, it seems as though there is a growing tension between thinking and acting from the basis of society versus the rising power from the federal top. Am I right to think that since the Depression of the late 1920s a need arose – right or wrong – for a stronger central Government in Washington? And that – as some authors write on the causes of the banking crisis, or credit crisis – an increasing influence of the central Government has led to interventions in the financial market which damaged the balance of the financial system? If central Government in the context of poverty reduction creates organizations that provide mortgages for poor people who cannot pay off their debts, stimulating those financial institutions to conceal the debts and resell them to others, isn't it only a matter of time before that balloon is popped? Doesn't a pyramid game, because that is what it was, always end badly? You can blame the banks for that, but strictly speaking it seems a wrong socially motivated corrective intervention by the central Government in the autonomous housing policy (right or wrong) of the Member States.

Is this one of the examples why President Obama – at the moment of writing – is this time round having a much harder election campaign than last time? Romney promises time and again a smaller central Government while Obama, especially with his health-care reform (hardly an issue for Europeans but for many citizens of the United States nothing less than a central Government intervention,

that for this reason alone, independently of the content, evokes resistance) gives the impression of wanting central Government to grow. In other words: if the viability of a Federal system stands or falls with the principle that the power must remain with the constituent parts, how great then is the risk that the United States will lose its vitality, as power shifts to the federal Government surreptitiously? Is this not then contrary to the characteristics of a federal system that no hierarchy between the two levels of Government may exist?

Imagine that this reasoning is correct, namely that a shift in power from the basic parts of a federal State towards the central part of that federal State is detrimental to the relations between the Federal part and the State-parts, how then should we arrange the jump from the current European intergovernmental decision-making process to a federal decision-making system? The present error of errors by 'Brussels' to persist in imposing even more centralized uniformity, is probably the error that will eventually lead to the intergovernmental breakdown. And so (probably and hopefully) the last crisis needed before the inevitable decision to create a federal system is taken. In that respect I am cynical: the bigger the mess they make now, the faster the realization dawns that rescue lies in federalization. But then what? How do you get 'Brussels', that is wallowing in centralized power, to turn off the button of intergovernmental decision-making in favor of constitutional and institutional federalization in such a way that the predominant powers shift back to the participating countries and their populations? What must happen? How can this be realized?

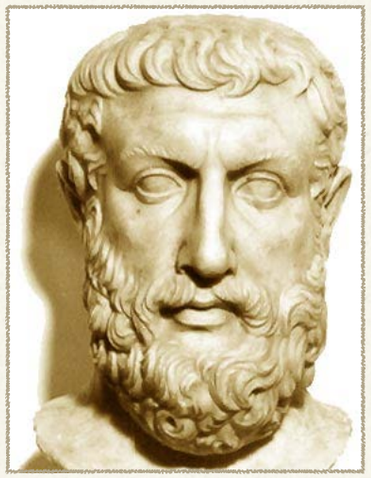
Incidentally, I hope you're not nervous of language with words such as nonsense and mess. In that respect, the authors of The Federalist Papers went much further. Hamilton writes in Paper no. 15 on *"The imbecility of our government....."* Clear language. Henri Poincaré, quoted earlier, would have condoned an expression such as this. In a following paper I will also dwell on the words of the other co-author of the American 'Federalist Papers', James Madison. Because I believe his words are instructive for the Europe of today, more than two hundred years after being written down.



Klinkers, August 2012

PAPER 3

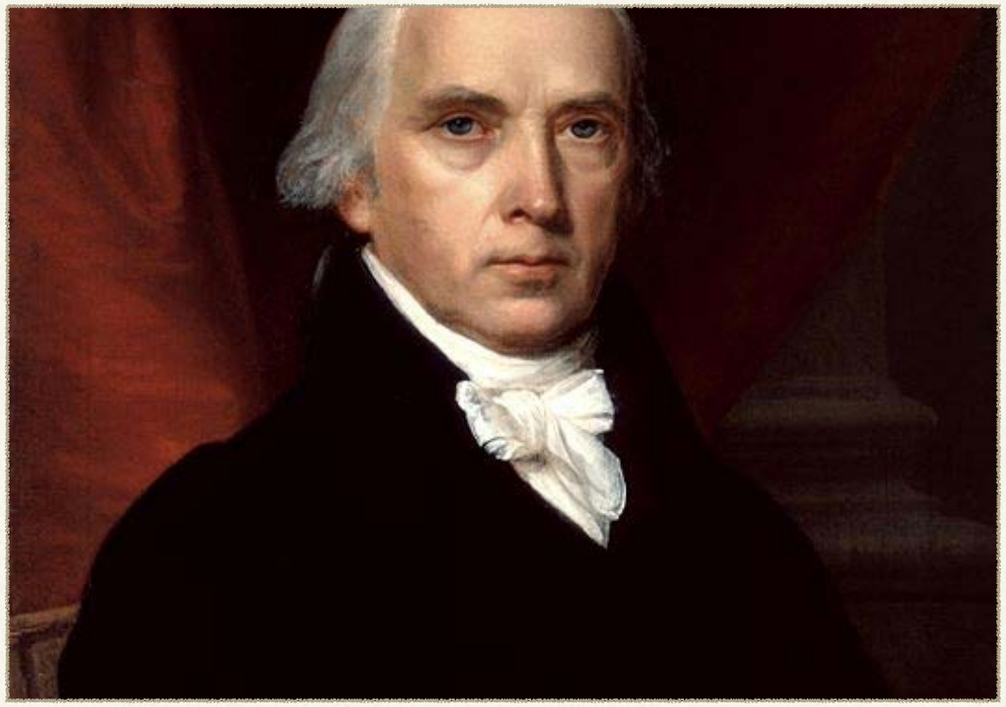
In Paper no. 3 Klinkers quotes a passage from The Federalist Papers, a text which clearly indicates how personally the authors of this famous writings on the proposal of a Federal Constitution in 1787-1788 directed themselves to the citizens of America, to convince them of the usefulness and the need to opt for a federal form of organizing. This as a signal to Tombeur to regard thoughts and ideas about a European Federation not as a technique of organization advisors, but primarily as a passion to give the people what the people deserve.



Parmenides

FAQ 3: What is subsidiarity in the EU-context?

This is a rule in the EU-treaties in which it is agreed that it remains with the member states to do themselves what they can do best themselves. However, this principle has never worked properly in the EU-intergovernmental governing system because it has never been clear what powers in which policy domains should be left to the member states to decide upon by themselves. The EU-treaties do not include a definition or a criterion regarding this matter. Thus, this principle provokes a permanent debate on the division of powers between the EU and its member states. Moreover, the European Council (the assembly of national government leaders) can decide top-down whatever they deem appropriate for all member states. Subsequently, the member states have to carry out these decisions, EU-wide. However, due to the fact that these decisions are mostly the fruit of wheeling and dealing by national-driven agendas, they may be profitable for one member state and disadvantageous for another. That is why the intergovernmental system, with its non-functioning principle of subsidiarity, meets with growing resistance. See for our criticism of the principle of subsidiarity in the EU-context Papers no. 2, 11, 16, 20, 21 and 22.



JAMES MADISON, 1751-1836

"Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys."

There is still something we should take into account when making comparisons with The Federalist Papers. The three authors published their work in New York City newspapers, directing themselves directly to the readers – often firmly, sometimes asking or even begging. One of the most striking passages is to be found in Paper nr. 14, written by James Madison. Let me quote it in its entirety:

"I submit to you, my fellow-citizens, these considerations, in full confidence that the good sense which has so often marked your decisions will allow them their due weight and effect; and that you will never suffer difficulties, however formidable in appearance or however fashionable the error on which they may be founded, to drive you into the gloomy and perilous scene into which the advocates for disunion, would conduct you. Hearken not to the unnatural voice which tells you that the people of America, knit together as they are by so many cords of affection, can no longer live together as members of the same family; can no longer continue the mutual guardians of their mutual happiness; can no longer be fellow-citizens of one great, respectable, and flourishing empire. Hearken not to the voice which petulantly tells you that the form of government recommended for your adoption is a novelty in the political world; that it has never yet had a place in the theories of the wildest

projectors; that it rashly attempts what it is impossible to accomplish. No, my countrymen, shut your ears against this unhallowed language. Shut your hearts against the poison which it conveys; the kindred blood which flows in the veins of American citizens, the mingled blood which they have shed in defense of their sacred rights, consecrate their Union and excite horror at the idea of becoming aliens, rivals, enemies. And if novelties are to be shunned, believe me, the most alarming of all novelties, the most wild of all projects, the most rash of all attempts, is that of rending us in pieces in order to preserve our liberties and promote our happiness."

These words dating from 1787 seem fully applicable to the situation within the European Union of 2012. Taking into consideration the circumstances in America at the time, this formula of addressing the population directly through newspapers was an obvious choice. In 2012 we have the possibility of using social media as a vehicle for putting across our ideas.

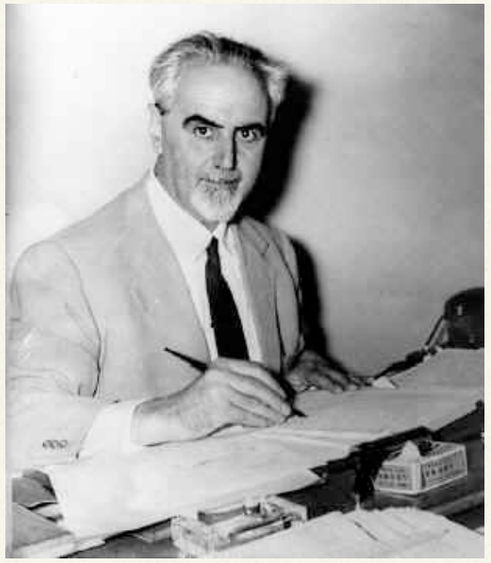
Disseminating the birth certificate of modern European federalism has been much more difficult. Since we often draw from best practices from the past in our quest for a federal Europe, this is the opportune moment to mention **Altiero Spinelli** and **Ernesto Rossi**. Spinelli is seen as the founding father of European federalism. In 1941, together with Rossi he wrote, while imprisoned by Mussolini on the island of Ventotene, the famous Ventotene Manifest: it is, just like Madison's text, a passionate federal concept that is continued and elaborated by the Spinelli Group after World War II.



The island Ventotene, near de west-coast of Italy.



Altiero Spinelli (1907-1986).



Ernesto Rossi (1897-1967.)

For the integral text of the Manifest (in several languages) I refer to http://www.altierospinelli.org/manifesto/en/manifesto1944en_en.html.

For an instructive timeline of European federal history since the Ventotene Manifest I refer to a publication by the Union of European Federalists: http://www.federalists.eu/uef/timeline/.



Tombeur, August 2012

PAPER 4

Tombeur replies with two Papers 4 and 5. In no. 4 he endorses the pernicious effects of the current intergovernmental operating system. More detailed than Klinkers he explains why the intergovernmental government, good to lift the European Community off the ground in the 1950s, is no longer functional for a good cooperation within Europe. He closes the Paper with hopeful signs that leading European politicians since the summer of 2012 are using words that seem to be going in the direction of a federal system for Europe.



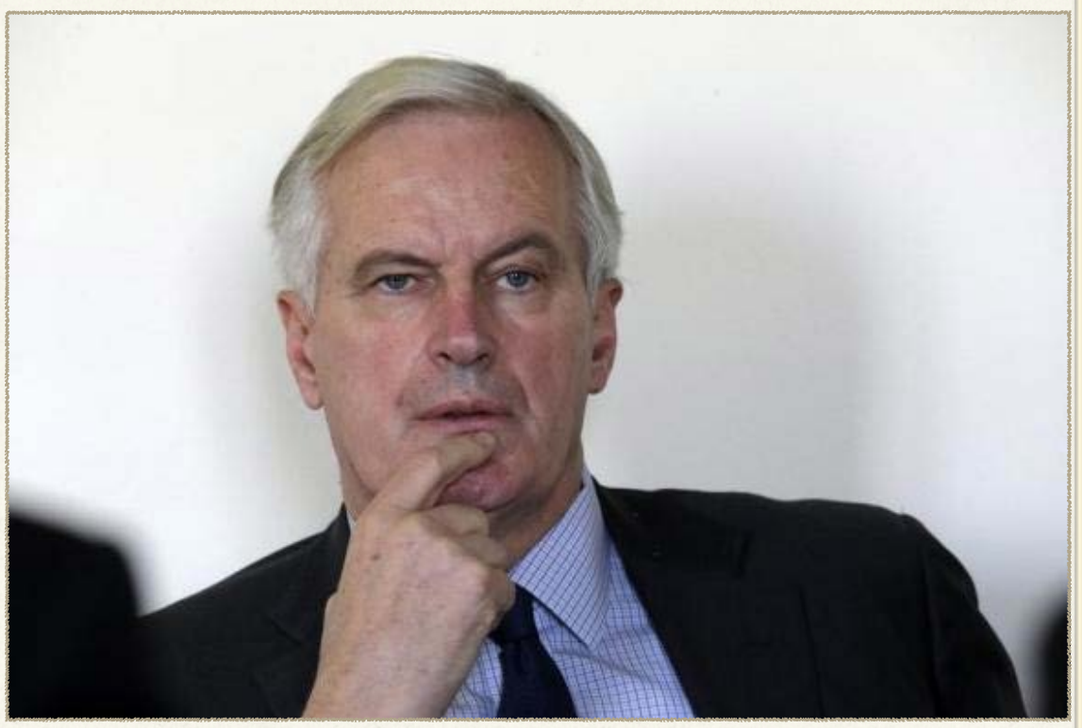
Diogenes

FAQ 4: What is the vertical division of powers?

This is the essence of a Federation: the federal body has a limitative set of powers to take care of the common interests of all member states. All other powers remain with the Citizens and the member states. The federal body cannot take any decisions on subjects other than those which have been entrusted to this body by the member states within the limitative list of powers.
See Papers no. 14, 16, 21 and 22.

FAQ 5: What is the horizontal division of powers?

This is the classic trias politica: the division between the legislative, executive and judicial branches of government. In a Federation this horizontal division of powers can be applied on the federal level, as well as on the level of the member states.



MICHEL BARNIER

EU-Commissioner Barnier in the Flemish newspaper De Tijd, August 4th 2012:

"Europe will be a Federation, or will not be."

PAPER 4

Esteemed Klinkers, your need to continue our talks on federalism and federations, corresponds to my year-long dormant plan to put something concrete on paper regarding this subject – for example, a reworking of my unpublished text about the creation of an 'interfederation' in Europe. I suspect that you, just as I do, view with rising frustration the inability of the EU's political leaders to combat the current financial and economic crisis. And a crisis is the best gauge of merit.

I think federalism is the organizational form of the future, especially for public administrations. Public administrations have not yet followed the example of many internationally active companies. The 'multinationals', with their partly autonomous branches and the central leadership on top, have already existed for decades. However, only a few modern States have attempted to organize themselves into a Federation. This is striking for Member States of the European Union, since federalism combines the benefits of both small and large scale. All the more so, because federal States outside of the European Union stick to that organizational form, despite crises – for example Australia, Brazil, Canada, India, the United States and Switzerland.

On the other hand, we see that unitary States tend towards federalization or regionalization. It seems that the organizational model of federalism does offer a certain attraction.

I enthusiastically accept your offer of writing together on this subject, because I agree with your assertion that the European Union's current operating system is increasingly disintegrating the Union. After three years of political improvisation as a response to the financial and economic crisis, it is high time to stand up against it publicly. A European Federation would be the appropriate response to the developments in Europe and in the rest of the world.



You convinced me that every effective policy must start at the base, within society. From that basic concept we must, of course, begin to form our opinion on the situation of Europe, on the reorganization of the European institutions and on the way forward towards that goal.

Looking back initially is important because a historical consciousness contributes to our understanding of the present, and to our rational estimate of the future. I agree with you that sovereignty in the form of the Westphalia peace is already a thing of the past for over half a century. I prefer to use the term 'independence' in inter-state relationships, because it concerns the external dimension of governance. States are indeed no longer independent. More than ever they are economically interdependent due to the explosion of international trade, led by the multinationals. They have bound each other politically to many international rules, especially in international agreements and treaties, including the power to enforce the execution of that which has been agreed upon. I agree with what you concisely stated earlier. Their sovereignty or internal decision-making power at the highest level was increasingly limited by external factors, to which they have themselves contributed. The world has become a village. Despite this global change, beginning in 1945 and developing at an ever-increasing pace, some states doggedly stick to their existing structures and national agenda's, while others wish to acquire 'independence' per se.

Globalization has indeed continued through the establishment of permanent international organizations between States. The treaties establishing them have bestowed to these international organizations a functional autonomy, with regard to policy preparation and policy implementation, but rarely having any influence on policy choice. The decision-making power of treaty-driven States belongs exclusively or predominantly to the constituent parts of the organization, the States. This reflects a Confederation of States. Regardless of the size of their autonomous decision-making power, most international organizations are, in terms of legal basis and in institutional terms, Confederations, even though they are not labeled as such. A Treaty is the basis of a Confederation, which implies that any Member State may unilaterally annul this international contract (and leave the Confederation), and that the Member States can only change the Treaty founding the Confederation unanimously, without the need for consent by a confederal institution, should this already have been created. This proves that the sovereignty or the ultimate decision-making power lies solely with the members of a Confederation.

In a Federation none of this is the case. In a federal organization, sovereignty lies with the whole (the Federal Government) and with the parts (the Governments of the constituent parts, the federated entities or the Member States): sovereignty is both divided and shared. Moreover, the Covenant between States (Latin: ‘foedus', from which the word ‘Federation’ is derived), stipulates that a Constitution, or however that political and legal basis is named, can only be amended with the consent of all constituent parts. This applies, for example, to the redistribution of powers, the joining of a new Member to the Federation or the departure of another. Yes, we must later explain the complexity of these institutional and legal aspects of federalism.

Now I want to return to the present crisis which, I agree, has been creeping into the European institutions since 1992. This occurred tragically at the time that the nations of Central and Eastern Europe became part of the Union. Maybe we should draw the conclusion that the European Federation should have already existed before new members – boasting a national feeling that had been suppressed for decades and with underdeveloped economies – would join. If the Federation would have existed by then, they would have had the choice to decide, wholeheartedly, whether or not to become a member of a Federation. Deepening the Union at that time instead of choosing to enlarge it, had been a political option. However, it was decided otherwise. With the pernicious effects that we now know of.

We must learn from the past but we should not plainly accept the consequences, nor let our head hang down. We must fight the crisis of intergovernmental Europe. A tragic culmination of this crisis is the inflation of four presidencies, one on top of another. This way of decision-making dysfunctions in an enlarged and complex organization such as the EU. This intergovernmental decision-making cannot be effective or efficient in a group of 27 States

which are so diverse, not only in the current situation, but also historically, and which are so ambitious, for example with the creation of the Euro currency.

Speaking about function and dysfunction: the evolution of the current European Union was launched by 'functionalism' as a technique of 'integration', i.e. more unity at the expense of diversity. By this I mean that the European treaties allow or even prescribe, from the beginning, that every action of a European institution with an integral effect or an integral aim, is lawful, even if this action is intervening with the policies and regulations of Member States. In other words, any supranational action serving the purpose of integration is usually permitted. This is because there is still no strictly demarcated division of competences between the Union and its Member States, although that distribution is no longer as vague as it used to be. The Court of Justice has contributed to that expanding, and sometimes even hijacking of power, exercised by the European Community, now the European Union – with the symptomatic result of Europe's rampant 'regulitis' in many policy fields on a micro-level, which increasingly frustrates citizens and businesses. Thus, European integration amongst the populations of the Member States has received more and more the meaning of a merger of all differing aspects of life into one completely centrally imposed uniformity. This created among the population the impression of completely losing their national and regional identity and a too distant democratic participation. The Lisbon Treaty has somewhat restrained this so-called functionalism and thus barely demarcated transfer of power to the European Union, but has not entirely undone this.

I believe that this teleological paradigm of the European treaties has put the germ of Euro-skepticism into the institutions, resulting in the Union's political inability and the widening of the fault lines between Member States. Hence, it has become even easier for national politicians to portray the European Union as a threat to their respective societies, even though they themselves have contributed to this effect of European decision-making. Apparently, the intergovernmental, if not hybrid, decision-making in the Union leads to schizophrenia in some policy makers from the Member States – as a result of which they run from one raging fire to another. Each time for short-term relief, but without a final solution.

I consider a federally organized Europe to be vital – in the interests of its inhabitants, associations, companies, national Governments and European institutions. A Federation is absolutely not the same as 'integration', as I outlined above. Integration calls the image of a mixture which absorbs all the constituents fully. A Federation, on the other hand, leaves the ingredients intact and creates a link between them, thus creating a new element with its own characteristics. For this reason we must principally oppose the repeated call of politicians of all kinds to increased (political) integration, since that makes the impure intergovernmentalism even more turbid. 'Integration' is usually a sympathetic word, but not in this context. Protecting the autonomous individuality of the constituents in a

desirable cooperation cannot be realized through intergovernmentalism, but exclusively through federalism.

At the end of this Paper there is optimism. In Paper 0 we stated that European politicians seem to bypass the F-word. Well, good news. The Flemish newspaper De Tijd of 4 August 2012 published some statements made by Michel Barnier, EU Commissioner for the internal market. The heading of that article reads: *"Europe will be a Federation or will not be."* Otherwise, according to him, the common project no longer has any future.



Michel Barnier makes it clear that Europe has to make a fundamental choice.

Barnier states there should even be a deadline for when this should happen. In his opinion, the transformation into such a Federation should be completed by 2016. The Federation must, according to Barnier, have at least one common economic governance, with a joint budget, a bank union and an industrial policy, with a single Minister of Finance and a President of the Union, initially appointed by the European Parliament and in a later phase by all Europeans. The same, albeit more modestly and without explanation, came from the heads of Government of four large Member States, Hollande, Merkel, Monti and Rajoy, following their meeting on 21 June 2012 on the growth pact for Europe. In their joint statement they spoke of a 'political breakthrough' and even ... 'a federal leap'. Would the F-taboo finally be broken?

Probably we see here, for the first time, that leading politicians in the middle of the European centre of power, dare to say out loud (see, for example, the reports in the French newspaper Libération) that the European Union must transform into a kind of Federation of States. If this bold statement can be shared and strengthened openly by other leading politicians, then we can anticipate a lot of fun in the elections for the European Parliament in 2014.

This is where I stop – provisionally – with the explanation of the foundation of federalism. In a later paper I will elaborate on the fact that in almost every Federation this model is used differently, while always applying the same basic principle: a mutual agreement between the citizens of all the constituent parts of the Federation as well as each individual State having sovereignty on the two levels of Government.

Tombeur, August 2012

PAPER 5

In Paper no. 5 Tombeur describes in detail the essential characteristics of a Federation. Then he points out what types of Federations exist, thus eliminating a large number of popular misconceptions about the origin, shape and functioning of a Federation. This Paper serves as a trigger for a 180 degrees turn-around in thinking about Federal organizations. It aims to open the eyes of citizens – misguided by euro-skeptics or even euro-hating politicians – to the real power, security, progress and sovereignty that a Federation has to offer.



Heraclitus

FAQ 6: What is European integration?

With this we mean a type of assimilation of member states, originally only intended to cover economic matters. However, over the years the EU has usurped more and more policy fields, due to the lack of a clear division of powers between the EU itself and its member states. Thus, the term 'integration' implies that member states have to look more and more alike because they have to adopt the same policies and the same rules. See Papers no. 4-6.

FAQ 7: What is wrong with European integration?

As such 'integration' is a sympathetic word. However, it is necessary to use this term in the correct context. It is wrong to use it in the sense of the integration of member states themselves. That is similar to assimilation, losing one's identity. States and citizens are not in favor of this. The concept of 'integration' is only wise at the level of the federal body. At that level the limitative set of powers which have been ceded by the member states to the federal body, are executed in an integrated manner. Thus, in a Federation the member states themselves do not integrate, only the powers of the federal body do.



JACQUES DELORS

"My objective is that before the end of the millennium Europe should have a true federation. The Commission should become a political executive which can define essential common interests...responsible before the European Parliament and before the nation-states represented how you will, by the European Council or by a second chamber of national parliaments." (On French television 23 January 1990)

Althusius' core thought, as you cited in Paper no. 2, was the vision that a State can only effectively function for the benefit of society on the condition that this State was built bottom-up. This is the most fundamental aspect in the concept of Federalism. Without a form of democracy, there is no Federalism. I admire the fact that this was written already four hundred years ago. The question whether Althusius, with his concept of a Contract, referred to something else than an agreement between equal partners that can be annulled unilaterally, I will stay well clear of. Both a Contract and Covenant assume a compromise, but a Federation implies a larger commitment by the signing parties: the Contract cannot be unilaterally terminated or amended; this is only possible through the consensus of all parties involved. The specific name of the Act, or whatever it is called, is not important. What matters in terms of being a Federation is the commitment, expressed in the Act.

Below I state the essence of Federalism. The reader who would like to get more information is referred to the very informative publication by Éva Bóka, titled 'Rethinking the role of the federalist ideas in the construction of Europe'.

She describes the federal characteristics on the basis of Aristotle, Althusius, Montesquieu, Locke et cetera, until federalists like Spinelli en Delors.

http://www.ivan-herman.net/Eva/Textbooks_Articles/RethinkingTheRole.pdf

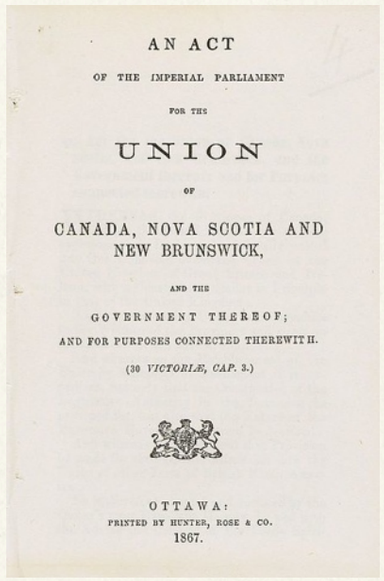
The organizational model of Federalism presupposes the fulfillment of two essential conditions: 1) autonomy of the constituent parts of the whole and of the whole itself, and 2) mutual solidarity, thus a kind of cooperation between the parts and the whole. In an effective Federation the governing bodies of the parts and of the whole should function independently, but also in connection with each other, to a certain degree.

However, the unique feature of the organizational model of Federalism lies elsewhere. It consists of a perfectly mutual agreement between independently operating governing bodies, constituting a single whole, while each exerting certain powers by themselves and entrusting certain powers to institutions operating on behalf of the whole. That Covenant is absolutely mutual in the sense that it can be changed only through mutual consent – thus both by its constituent parts (the Federated Member States or Länder, or whatever name the constituent parts carry, for example, provinces, regions) and by the whole (the Federation, Union or otherwise). That Covenant can only be lifted if the competent institutions of all constituent parts and that of the whole agree. In other words, the survival of the whole and of its parts is ensured, until they themselves would decide otherwise.

That consensus does not only apply to a change in the division of competences, but also to the joining of the Federation, the exclusion or retirement (secession) from the Federation. The underlying principles leading to these far-reaching commitments are: each governing body is equal in sovereignty and all governing bodies are mutually supportive, because the Covenant offers added value – for example for external security or economic welfare. A good example of how this model works in a Federal State is Canada: the predominantly Francophone province of Quebec's specificity is no reason to give this State a separate statute in the Federation with an Anglophone majority. The other provinces refuse such a deviant Statute, despite all actions of Québecian nationalists.

In essence, a Federation differs from other organizational forms in terms of absolute reciprocity of consent when changing the internal balance of power. A federal organization with the 'checks and balances' which I emphasized here, is a concrete application of what is pointed out by the sociologists Crozier and Friedberg about power: it is pointless to fight a power in order to destroy or restrain – order in society is necessary, thus power is inevitable – unless it takes place in the form of a countervailing power.

Make no mistake, there is no double sovereignty in a Federal organization, since that would entail a completely separate power of each governing body. A Federation possesses both a divided and a


AN ACT

OF THE IMPERIAL PARLIAMENT

FOR THE

UNION

OF

CANADA, NOVA SCOTIA AND NEW BRUNSWICK,

AND THE

GOVERNMENT THEREOF;

AND FOR PURPOSES CONNECTED THEREWITH.

(30 *VICTORIÆ, CAP.* 3.)

OTTAWA:
PRINTED BY HUNTER, ROSE & CO.
1867.

The constitutional basis of the Canadian federation.



How Canadians govern themselves

shared form of sovereignty. Both levels of Government, the federal level and the level of the constituent parts, form a part of that sovereignty, with their own powers. And this autonomy can only be changed through the mutual agreement of all governing bodies. Sovereignty in a federal State is divided, but also complementary: the essence of a Federal form of Government is that the Federation and its parts are assured of their continued existence to the extent that the abolishment of the Federation, or a change in its composition or internal balance of power, are only possible through a general agreement at both the Federal level and that of the Member States. This makes it clear that more is needed than a political decision made by a number of States for the creation, preservation and abolishment of a Federation.

Federations are distinguished from other State forms not by a hierarchy of regulations between the Federal level and the Member States (for example, in Germany the Federation has the decision-making power, the Member States (Länder) execute them), nor by competing powers (which can also occur in unitary States), nor by the method of decision-making (by consensus or majority), nor by the centre of gravity of the distribution of power – most powers, or the main power, can be exercised both on the Federal level and by the Member States. However, in each case we speak of a Federation. Again, the basis for a federal system is the fact that the sharing of power between the parts themselves and between them and the whole can only be changed through mutual consent.

Of course, all characteristics of a Federation are parameters by which the degree of solidarity can be measured. For example, a Federation in which the constituent parts mostly take majority decisions, points to an alliance between those Members that is stronger than a Federation, where the constituent parts must decide unanimously. The decisions for the whole always have to be taken by all bodies representing that whole. The conditions that must be fulfilled to make Federal decisions, reflect the strength or weakness of the Federal Government.

Therefore, a Federation differs from a Confederation. A Confederation represents a mutual agreement between entities, usually States, which can be terminated unilaterally by one of its Members. A Confederation does not create a governing body operating separately from its Members; it creates no authority that can take decisions and perform in their name. A Confederation creates a

bond similar to that of a marriage or any other form of private contract: it arises from mutual consent, but may be cancelled unilaterally. The distinction between a Federation and a Confederation thus lies in the basis of their union: the Federation's basis is perfectly mutual, usually called the Constitution, a Confederation is based on a Treaty that can be unilaterally annulled.

I have dwelt on the fact that very often the concept of 'confederalism' is used in the creation of international organizations. I repeat that a Confederation exclusively derives its power from its Members. It does not hold sovereignty by itself, nor an approved power in itself, because the (unaltered) continuation of the Confederation depends entirely on the decisions of the Members. The whole exists only thanks to the parts. Usually the concept of confederalism is used for the creation and the functioning of international organizations, therefore the intergovernmental European Union strongly resembles a confederal system.

In the EU it is quite clear that the decision-making power lies with the Member States, although they come together in European institutions such as the Council of Heads of Government, the Councils of Ministers and even Parliament, whose Members are elected from each Member State. The Treaty of Lisbon has confirmed the Confederate model by expressly providing the option for a unilateral withdrawal by any Member State. Nevertheless, the European Union possesses some light Federal characteristics. For example, in its weak Federal nature we see the role of the Commission, with its right of initiative for new legislation and its power of governance, and in that of the Court of Justice, ensuring the primacy of Justice by placing European rules above national rules.

A Federation has nothing to do with the concept of decentralization. A central administration is decentralized when the decision-making power is granted unilaterally to lower institutions. But that power can be withdrawn unilaterally. Those institutions may use their delegated power independently, though usually controlled or supervised by the central Government.

Federalism versus intergovernmentalism



The basic differences between federalism and intergovernmentalism: sovereignty versus centrally imposed uniformity.

All this means that a Federation does not create centrally imposed uniformity, quite the contrary: it is only at the Federal level that some compromises must be made to bind the whole; the Member States and their policies exist independently. There could be a Federal policy that differs from that of the federated authorities and between them their policies could also differ. At the Federal level the constituent parts take part in the decision-making process because they make up the whole. Thus, the United Kingdom and France, who regard sovereignty as indivisible – lacking experience with Federalism – come to the wrong conclusions.

From what I am writing here you can deduce that the characteristics of a Federation as presented by you in Paper no. 2 are correct, with a proviso regarding your points (f) and (g). For the following reason:

Federal States can be very different in their organizational forms, but they must all meet the essence, as described above. There are as many forms of Federalism as there are Federations. Each Federation has its own particular characteristics. For example, there are Federations with and without hierarchy between the legal norms of the Federal Government and those of the Member States. Germany boasts a regulatory hierarchy ('Bundesrecht bricht Landesrecht') but in Belgium each jurisdiction is assigned exclusively to one governing body. However, Federal systems can be categorized, relating to the criterion of distinction.

A Federation can be created bottom-up or top-down. Usually, the double administration starts through the cooperation (federalization) between autonomous areas or even independent States, thus bottom-up (for example, the United States – 'e pluribus unum', Canada and Switzerland). However, this is not necessarily always the case. The reverse movement, top-down, or the dissolution or 'defederalization' of a centrally-administrated State into a federal State also occurs (for example, Belgium and Czechoslovakia after World War II). This difference in the process of its political creation usually has an impact on the type of Federation that ensues: Federalization means a striving for solidarity and is therefore centripetally; defederalization aims at the recognition of identities and thus is centrifugal. Federations emerging from bottom-up are focused on cooperation, top-down emerging Federations focus on autonomy.

Another distinction can be made between institutional and functional Federations. Here, the criterion of distinction is whether or not the three horizontal powers – the legislative power, the executive power and the judiciary (the so-called **trias politica**) – are united on one level. In institutional Federations there are two or three powers united at every level, both at the Federal level and at the level of the Member States. In those Federations there is little dependency between the two tiers of Government. This is the case in Australia, Belgium and Canada. Functional Federations, on the other hand, have spread those powers across the two levels of Government. As a result, mutual dependency is high. Germany, Austria and Switzerland are functional Federations.

With respect to the autonomy of resources a Federation can also be classified in terms of autarchy versus solidarity. The criterion is the

degree of autonomy of the resources, including finances. A Federation is called autarchic when the two tiers of Government are predominantly autonomous in terms of income and expenditure. This is the case in Germany. We speak of solidarity if the Federation collects the resources and distributes them to the Member States. This applies to Belgium: only 25% of regional revenues are collected directly. Canada holds a position in the middle: the provinces collect around 45% of their income themselves.

There are exclusively and competitively organized federations. One distinguishes them by measuring the degree of separation between the policy domains, within the competences of the two levels of Government. In other words, one investigates whether there are many or few policy areas in which both levels may operate. In exclusive Federations most policy areas all, or predominantly, belong to one level of Government, either on a Federal level or on that of a Member State. As a result, the Federal and regional norms hardly compete with one another, thus there is little hierarchy between those norms or other legal matters. This is the case in Belgium, where some policy domains are completely or almost entirely mapped to a particular level. Competing Federations, on the other hand, are structured with most policy domains across both levels – this is the case, for example, in Switzerland.

Moreover, one can distinguish Federations by their way of internal cooperation. The criterion here is the way in which the cooperation between all autonomous entities of the Federation is organized. In some Federations they cooperate mainly through intergovernmental agreements and inter-Ministerial conferences, to reach communal decisions. This is the case in Belgium and Canada. Such Federations may be called intermediate cooperative federations. In other Federations, the cooperation to decide communally takes place formally either within a Federal institution, such as a Chamber of the Federal parliament, or in an institution of the Federated entities. This is the case in Germany, where the cooperation between entities is deliberated in Federal institutions exclusively, inter alia the 'Bundesrat', one of the two chambers of the Federal parliament composed by representatives of the federated units, the so-called Länder. Such Federations may be called integrated cooperative Federations.

To conclude this Paper, I would like to emphasize two points. Generally, the centre of gravity of the exercise of power in a Federation can lie either in the 'central', Federal Government or with the Member States. This is a criterion to determine whether a Federation is central or peripheral. Belgium is a central Federation, Switzerland is a peripheral Federation. Federations evolve, just as other organizations do; their characteristics can change. For example, in the United States the Federal government only became much more important since the New Deal of President Franklin D. Roosevelt, to combat the economic depression of the 1930s. And the Federal Army remained after World War II greater than ever. Since the 1980s there is a political movement advocating a shift of Federal power to the Member States. This important aspect of the United States' internal politics receives only little attention in our media.

Klinkers, August 2012

PAPER 6

The firm statements by Tombeur in Paper no. 5 gives reason for Klinkers to dig deeper into the essence of the concept of 'Federation'. Over four paragraphs he puts questions to Tombeur. In the first paragraph he enquires as to whether the Papers no. 4 and 5 express the personal opinions of Tombeur or whether these are generally accepted by experts in this field. In the second paragraph Klinkers asks how far back can we trace this thinking in terms of a federal organization? Is it a relatively new phenomenon or are its origins found centuries back? The third paragraph casts light on a topic that should be discussed later, namely the position of the United Kingdom in a federal Europe: would the United Kingdom, just as is the case in the present intergovernmental system, be a separate element within a European Federation? In the fourth paragraph he deals with the question of where the driving force is going to come from in order to turn the EU's dysfunctional intergovernmentalism into a federal system.



Archimedes

*FAQ 8: What is the **Kompetenz Katalog**?*

This is the list of limitative powers ceded by member states to a federal body in order to use these powers, and no other powers, to take care of the common interests of member states which can no longer be performed by them individually. For instance, to have a European defense, a European foreign policy, a European energy and environment policy etc. The federal state of Germany has many times insisted on accepting such a Kompetenz Katalog in the EU, whereas other member states have always rejected this. In essence, the application of such a Katalog is the same as creating a Federation.

See Papers no. 4, 10, 15 and 20-22.



ABRAHAM LINCOLN

Physically speaking, we can not separate. We can not remove our respective sections from each other nor build an impassable wall between them. A husband and wife may be divorced and go out of the presence and beyond the reach of each other, but the different parts of our country can not do this. They can not but remain face to face, and intercourse, either amicable or hostile, must continue between them.

PAPER 6

Esteemed Tombeur, in this Paper no. 6 I put a number of questions to you. For easy reference they are given a letter.

Paragraph A

In Papers no. 4 and 5 you have accurately described what a Federation is. And also what it is not. Thus a few misconceptions about the essence of a federal form of government are dispelled. But there remain some questions:

1. Is this your personal opinion that you put forward, to be debated and challenged by others? Or is this, what you define as the characteristic properties of a federal system, to be considered the prevailing scientific theory, covered by the extensive bibliography at the end of our discussions? Thus generally not susceptible to divergent views?
2. Making clear what a federal organization is does not necessarily mean that it is, by definition, the best form of governmental cooperation for the European Union. In other words: why should Euro-

pean citizens on mass opt for a Federation? What are the advantages over current intergovernmental decision-making? And may a European Federation not have also disadvantages? If so, we should be honest about that.

3. We are talking about a federal organization, not about a federal Government. I asked you at the beginning of Paper no. 2 to clarify why you would rather not speak of a federal Government or federal State, but rather use the term 'federal organization'.

Now onto other matters.

Paragraph B

First back to Johannes Althusius, cited by me in Paper no. 2 and replied by you in Paper no. 5. You regard him more or less as the founder of thinking in federal terms. But if interested readers want to know more about this writer, then they will find in Wikipedia that Althusius is seen as the founder of Confederalism. That is why I asked in Paper no. 2 if your opinion about Althusius as the founder of federalism is shared by others.

According to Wikipedia, that would not be so. But indirectly you have replied on this in the first paragraph of Paper no. 5, although I did not see the significance at first. You say: The specific name of the act is not important. Rather, the commitments, as expressed in the act.

Concepts such as 'Act', 'Covenant', 'Agreement', 'Treaty', 'Constitution' are – in your opinion – not essential for the characterization of an organization as a confederal or federal form. The only thing that matters is what has been agreed upon – not how it is labeled. I deduce therefore that Althusius' description of the desired state contains so many characteristics that you believe that we must speak of a federal model, though Wikipedia says otherwise. Do you subscribe to my explanation of your thinking? If so, then someone should adjust the relevant text in Wikipedia.

Paragraph C

I have another issue. In Paper no. 5 you make the statement that it is an essential characteristic of a federal context that each government (the Federal level and also the federated or Member State level) is equal in sovereignty and that all governments of both levels are bound by mutual solidarity. As an example you mention Québec. Even though there is a strong movement to secede from the Canadian Federation, Québec gets no separate statute. In other words: the essence of this aspect is that none of the parts in a Federation have the unilateral right to leave the Federation should they wish to. Leaving the Federation is only allowed if all parts – thus both the Federal part and the Member States – are in agreement.

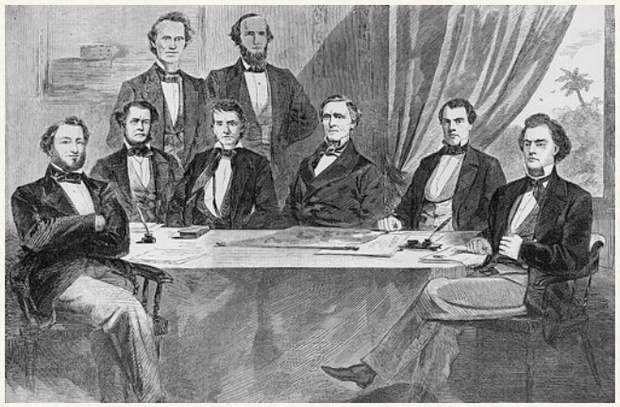
However, what about the secession from the American Federation by a handful of States in 1861? Including Texas. After the battle of Alamo in 1836 Texas gained independence from Mexico, with Sam

Houston as the first President. In 1845 Texas – the largest state after Alaska and the second largest in terms of population – joined the Federation as the 28th State. Why only in 1845? The Northern States were against accession, because Texas was pro-slavery. To get the economically and territorially important Texas into the Federation, the Federal law, which admitted Texas to the Federation, allowed Texas (and other States south of the Ohio River) to continue the practice of slavery. After Abraham Lincoln was elected president of the Federation, some southern States stepped out of the Federation and formed, in February 1861, the 'Confederated States of America', with Jefferson Davis as the first president. And with a Constitution that guaranteed the continuation of slavery.

Texas, South Carolina, Mississippi, Florida, Alabama, Georgia, Louisiana, Virginia, Arkansas, Tennessee, North Carolina

Although Lincoln – at that time not yet in office – was not known as being a radical, his stance against slavery was sufficient for those southern States to leave the Federation. Paul Brill describes in 1600 Pennsylvania Avenue how Lincoln, as far back as 1858, in a sharp debate with another presidential candidate, Stephen Douglas, profiled himself as 'abolitionist': he wanted to get rid of slavery. This made him a persona non grata in the southern States. When they learned that Lincoln would be President they unilaterally left the Federation before he took office.

President James Buchanan, then still in office, made it clear that the southern States had acted (with their secession) in violation of the Constitution, but he accepted the new situation as a political fact which he could not or would not change. In his book All Presidents. From George Washington to Barack Obama Frans Verhagen explains that this places – according to all US political historians – President Buchanan as the worst of the forty-four Presidents of America. He was succeeded by the President who is generally considered by experts to be in the number 1 position: Abraham Lincoln. Lincoln – according to Verhagen – was personally against slavery, but saw no constitutional possibility to ban this. He wanted to curb slavery within the southern States, assuming that this situation would eventually disappear.



First cabinet of the 1861 Confederated States of America.

In his inaugural address, March 1861, Lincoln stated that the Constitution did not allow a separation from the Union. He was prepared to allow the continuation of slavery in the South, but not secession from the Union. The integrity of the Union stood above all else. Only in September 1862 he fully opposed slavery. From the

opening shot, fired in April 1861, the civil war gained the character of preserving the Federal Union and in that context the emancipation of the slaves. It was the combination of a legal morality with a human morality, eventually leading to a victory of the North in 1865. And then, in December 1865, the thirteenth amendment to the Federal Constitution established a constitutional ban on slavery. After a period known as the Reconstruction, Texas re-appeared in the Federation in 1874.

The question we should answer within the framework of a correct characterization of a federal system is: what gave Texas, and those other States, the right to unilaterally leave the Federation? Had they, to justify their secession in 1861, stipulated at the moment of entering the Federation a specific statute or charter?

In the information available to me, I cannot find an answer to this question. But we should solve this issue. In order to be as clear as possible, I repeat my problem again in another way:

Inaugural address Lincoln, March 4th, 1861

Fellow-Citizens of the United States:

IN compliance with a custom as old as the Government itself, I appear before you to address you briefly and to take in your presence the oath prescribed by the Constitution of the United States to be taken by the President "before he enters on the execution of this office."

I do not consider it necessary at present for me to discuss those matters of administration about which there is no special anxiety or excitement.

Apprehension seems to exist among the people of the Southern States that by the accession of a Republican Administration their property and their peace and personal security are to be endangered. There has never been any reasonable cause for such apprehension. Indeed, the most ample evidence to the contrary has all the while existed and been open to their inspection. It is

See underlining by us: member states of a federation cannot leave the federation unilaterally

- Essential for a federal organization is that no State can leave the Federation unilaterally.
- Yet Texas has done so in 1861, and even a handful of other States of the United States of America.
- Later on they re-entered the Federation.

This leads to the questions:

- Would it be thinkable that Texas had gained the right – at the moment of accessing the Federation in 1845 – to leave the Federation in 1861 unilaterally? And the other States too?
- If so, how can this be compatible with what has been stated above, namely that no Member State is allowed to leave the Federation unilaterally?

If we do not have an answer to these questions, another question arises: should we assume that in this early stage of the federal model's evolution, around 1850, the unilateral withdrawal of a State was still accepted? And that it would not be until later that unilaterally leaving became a unique characteristic of federal thinking?

The fact that I would like to know whether a non-unilateral withdrawal should be viewed as a unique element of a Federation has to do with the question what the United Kingdom would do if the rest of the European Union would create a real Federation. Imagine Texas receiving a special statute with the right to make its own decision to step out, as a result of which we must consider that this element is optional, then it may be the only opportunity for the United Kingdom to participate in a federal Europe: joining a European Federation, under the condition that it might leave on its own authority. With, of course, the risk that other States also claim such a right. I would like to hear your opinion about this.

Paragraph D

In this paragraph I would like to talk about the source, the soul, the driving force which will lead to a Federation being chosen. This seems similar to the questions posed in paragraph A, but there I dealt specifically with simple facts and arguments advocating or denouncing a federal form of Government. In this paragraph I search for the beautiful star that we look up to and which we follow as a matter of course in the direction of a Federal Union.

When reading The Federalist Papers the 'star' they followed was bright and clear: freedom. Freedom in two respects: to be free from a domineering foreign country, in this case the United Kingdom; and, above all, to be free from a monarch. The emphasis on freedom continued to be the binding factor for years after the English domination. Safeguarding this freedom dominated all aspects of political and theoretical thinking at that time. Only if one understands this yearning for freedom, one can comprehend why Hamilton, Madison and Jay put such incredible emphasis on the importance of being a Republic. To them, the federal Constitution was synonymous with stately thinking emerging from the people and not from a hereditary monarchy. It is therefore understandable that the combination Freedom – Federal Constitution – Republic was popular among nine of the thirteen States to whom the choice for a federal system was submitted. And then the other four followed. After all, the majority of their inhabitants, or their parents, had fled to America due to stately or religious despotism. The proposed Republican Constitution, based on the ideals of the people themselves, promised freedom.

A particular detail: the authors of The Federalist Papers are continuously making a distinction between Democracy and a Republic. The first they reject, the second they embrace. It takes a while before a 21st century-democrat understands the meaning of this. At that time, 1787, the concept of 'democracy' was associated with pure popular sovereignty, thus with the right of every citizen to take part in the decision-making. This could only be organized in very small communities, the authors claimed. That was not feasible for a union the size of the United States. That is why they chose a republican form. In our current terminology this is nothing else than representative democracy.

Well, freedom was the driving force for the creation of the American Federation: the centrifugal parts sought consistency and solidarity in a centripetal point. So how do things stand in Europe at the moment? We have the centripetal character in common with 18th century America. Moaning and leaning, falling and standing up, 27 States in Europe try to organize a common center point, however, without taking the step towards a real Federal Government. Why does this seem to be so difficult? Is it because we in Europe do not have that urge for freedom? Thus missing a 'sacred fire' as the driving force into the direction of determined and convincing political decision-making? Apparently that is the case. No fire, thus no energy source, thus no strength, thus no direction?

Of course we must not forget that there certainly has been a driving force, originally, to pull a European Union off the ground: the desire to never again see a war in Europe. Maybe we should go back even further than the horror of the two world wars of the last century. In his stunningly detailed book Belgium, a history without a country, Rolf Falter describes nineteen centuries of violence, murder, manslaughter, rape, exploitation and terror in Europe, focusing on that part of Europe that we now know as Belgium and the Netherlands. Other than North America, we have a history of structural Government-driven violence. But would that be a source to further European commonality? Apparently not. At least not in the area of Europe where the power is. Our greatly increased prosperity, plus the decades long absence of any armed struggle in Europe – putting aside the war in the Balkans – have diluted thinking in terms of *"We need a European Union to prevent war at home!"*.

There is currently no deep-felt ideal that can act as an engine for a politically convincing and widely accepted federal form of Government. Worse still: the small steps with which we nevertheless advance, given the cautious statements from leading European leaders in the direction of more political 'integration', are all derived from the economic crisis. Thus, derived from something we must consider fairly sad. A negative source. The only 'positive' is in the ruling *"Never waste a good crisis"*. But if this kind of cynicism must be the basis for the decision-making to deliver us a European Federation, then doubts are creeping in.

That is why I put the most crucial question to you: the Americans had 'freedom', what could be the driving force for 'Brussels', that will encourage Europeans to rise above their narrow-minded nationalist interests, in order to bring them determinedly and convincingly towards the construction of a federal Europe?



Tombeur, August 2012

PAPER 7

Tombeur answers in detail the three questions posed by Klinkers in Paper no. 6, paragraph A. Firstly, is Tombeur's description of the essence of a Federation his personal opinion or is it the prevailing doctrine? Secondly, on what grounds could it be convincingly argued that a federal organization would be the best form of administrative cooperation for the European Union? Thirdly, why does Tombeur prefer the term 'federal organization' to 'federal Government'?



Epicurus

FAQ 9: What is the difference between a Federation and an inter-governmental governing system?
In a Federation the members retain their sovereignty. They do not lose anything, but rather gain something instead: no worries about interests that they themselves can no longer take care of individually. In order to look after these interests, the sovereign members of a Federation create an equally sovereign body. To that end, they establish a Kompetenz Katalog, a limitative set of powers to be executed on behalf of them by this – equally sovereign – body. Meanwhile Germany remains Germany, Spain remains Spain, Romania remains Romania etc. Within an intergovernmental system member states gradually lose both their sovereignty and their identity: they have to dissolve, due to the necessary integration. And this is not what they want. That is why there is a growing resistance among many member states and Citizens against the European Union. EU-intergovernmentalism is feeding Euro-skepticism.



KAREL VAN MIERT, 1942-2009

"Appointing one Commissioner per Member State creates a structure in which the national interests of the 25 Member States play a strong role. Some take their task seriously and defend the general interest. But others come from their capital to read out their cheat sheet."

PAPER 7

Re: Paper no. 6, Paragraph A

In Paper no. 6 you put forward some thorny questions. Whether I answer them fully to your satisfaction you must judge for yourself. In this Paper I will deal with your questions in paragraph A. Paragraphs B and C will be discussed in Paper no. 8; your questions in paragraph D will be answered in Paper no. 9.

As a reminder I repeat the essence of your three questions in Paper no. 6, paragraph A:

1. Is my description of the essence of a Federation my personal opinion, which may be openly disputed by others, or is it the prevailing doctrine?

2. How could it be argued convincingly that a federal organization would be the best form of administrative cooperation for the European Union?

3. Why do I prefer to speak of a federal organization rather than of a federal form of Government?

Re 1. My definition of federalism as an organizational model is in line with the prevailing doctrine. Recent publications by authors such as Daniel Elazar, Preston King and William Riker have confirmed the essence of the model. Federalism requires only

a. a degree of autonomy for the entirety of the organization (the federal Government) and a separately operating autonomy of each constituent part (the Federated administrations or Member States);

b. some form of internal cooperation or participation in the Federation, on an equal footing – the governments of the constituent parts should communicate with each other; and

c. a unanimously guaranteed autonomous survival of the whole and of the parts with their respective autonomies.

The third characteristic implies that the Federation's internal organization cannot be changed unilaterally – nor by the federal Government nor by (one of) the Governments of the Federation's Member States (the Federated members). All Governments must agree to any modification of the federal organization, whether this regards, for instance, the division of power between both levels of Government, or the merging or withdrawal of a member, or the joining of a new member. Thus Federations can be very diverse, as I stated before. Each Federation may have specific characteristics with respect to structure and/or procedure. However, the three aforementioned essential conditions must always be fulfilled in order to be able to speak of a Federation.

Re 2. What are the advantages of a federal organization which Europe's present intergovernmental decision-making does not offer? In our correspondence I wish to confine myself to considering two extremes. One's destination is automatically a Federation when one sees the consequences of 1) a single centralized Government for Europe, and 2) the return of the monopoly of power to single States in their own territory, only tempered by unilaterally annullable treaties that they conclude among themselves. You will immediately concur that both these models would lead to catastrophes for Europe. The first option would lead to a disaster in the form of a lack of legitimacy, injustice, insecurity, instability and economic decline. The second option would damage Europe from the outside.

One centralized Government for all European policy making – without the Member States' influence – would not be effective. It would not take into account the diversity of opinions about life in Europe. It would not even take into account the diversity of values with regard to European regulations. This applies to dealing with laws in social relations (horizontal aspect) as well as to the relation between regulations and power. The latter – in other words – refers to the way in which power brokers deal with the **rule of law** (vertical aspect). This is demonstrated by comparing the British le-

gal system to the continental systems, as derived from the Napoleontic laws. For this reason, centralized Government would not be efficient, due to the many different languages that should be used by that European governmental monopoly for any policy measure. After all, democratic norms imply the principle that the language of Government equals the language of the people – let alone the attitude of the older nations with regard to such a monopoly. The Netherlands, France, Poland, the United Kingdom and other States would be strongly opposed to one centralized European governmental monopoly. History teaches us that it would not take long before uprisings against such a monopoly would occur. Imperia are not sustainable. Imperia are States that are governed centrally, thus governed from one center of power, against the will of the diverse people. As such, Europe would disappear, sooner or later.

The other extreme, eliminating each structural European decision-making, even the intergovernmental form of decision-making, in order to hand over policy making to each individual State, would go fruitlessly against the globalization process as described by you in Paper no. 1. This evolution grew in Europe as of 1945, in the international community's reaction to State-nationalism, the source of so much trouble. Emotionally unresolved histories of war – some States try to suppress them, however without success because they keep coming back – should not pose any risk of repeating that sad period by allowing individual European States to wallow again in nationalism. Due to increasing political, economic and legal globalization the European States would only damage themselves by eliminating all forms of communal governance. In many respects the world has become multipolar. Large countries in the East and in the South continue to develop and want to play a role on the global stage, including Brazil, China, India, Russia, Turkey and South Africa (BRICST-group). Individual European States are incapable of delivering effective power balancing against such challenges. Individually, they are economically weak and lack the capital – even the five largest European countries, as has become painfully clear since 2008.

Why, then, choose for a European Federation?

In a general sense this would have a democratic advantage.

A federation equals democracy, subsidiarity, sovereignty, autonomy, bottom-up, no centrally imposed uniformity.

A really effective Federation does not have a monopoly of power. This is crucial: without a minimal form of a vertical and horizontal power sharing system and without a non-violent transfer of power, there will be no Federation. A Federation has as many centers of power as there are defederated governments, plus the federal center itself for governing the federal whole. They all create

their own regulations and have their own enforcing policies. If there is no independent exercise of power on the two levels of Government in a State calling itself a Federation, this Federation exists only on paper. Some countries outside of Europe call themselves a Federation, but if you look at their functioning, you will detect only one center of power. There is no option other than calling them federations in name only. You can name an animal a frog, but if it does not croak, jump and swim like a frog, it is not a frog.

By definition, a Federation implies a level of governance closer to the citizens than centrally governed States. This improves the reactive ability of that governing body: the smaller the distance between the decision-making and its execution, the bigger the chances of having a quick and effective approach towards policy challenges. Research indicates that people more easily entrust their local and regional problems to non-nationally elected representatives than to representatives in a political center at a distance.

Federalism results indisputably in a win-win situation both for the individual Member States and for the whole. Ludolph Hugo and Montesquieu already stated centuries ago: together, as a Federation, Member States are stronger than each State separately; the Federation guarantees the Member States' independency, as agreed upon in a Covenant.

States that claim their specific identity while showing to be governmentally accountable with respect to differences in language, religion, culture, economic structure et cetera, save their autonomy. At the same time they act as a united whole, combining their financial and other means, enabling the whole to exercise certain powers (sovereignty), in order to make them stronger in their joint projects and against other States.

Thus Federations create a win-win situation. They cumulate the desired unity and guaranteed diversity. Federal governance is created to reach governmental effectiveness and an efficient performance on a larger scale through the Member States' solidarity. The Member States remain completely intact, with their cherished identities. A Federation offers a structural solution for attacking – through cooperation – challenges, threats or conflicts among federated States and between them and third parties. It also protects their diversity.

Intact means that they keep their own parliament, government, judicial system, in short: all their institutions. No integration in the sense of amalgamating with other member states.

There is a third advantage in opting for a federal form of governance. The way in which a Federation's Member State operates creates a good sense of mutual competition. This stems from three characteristics of a federal bond: 1) their sovereign equality and the instruments preserving that equality; 2) the fact that they meet each other on the federal level and 3) the inevitable cooperation. Governmental dynamics are enhanced through

the competitive structure of the Member State's autonomies: the Government of a State operating more effectively and faster than another wins in terms of means and prestige. This does not solely apply to economic parameters but also to problem-solving creativity in other fields of policy-making, such as education, welfare and security. A centrally governed State cannot offer that many chances for exchanging knowledge and experience, and therefore learning processes and comparisons, because that centrally governing body has the monopoly of power that kills any initiative and diversity.

Does a federal structure not have any disadvantages? Of course it has.

In a centrally governed State it is easy for the people to discern which institution or administrator is entitled to regulate and execute regulations; and is thus responsible for a particular measure. A dictatorship is the most clear form of governance, but something that should obviously be avoided. In a Federation things are more complicated, because regulations are more diverse due to the fact that federal governance and the Member States' governance is shared. In a Federation the citizens' legal status differs depending on the Member State in which they live or perform legal acts. They have to know different legal systems and deal with them. Nevertheless, it has been concluded through opinion polls, for instance since 1949 in federal Germany, that the majority of citizens prefer the existence of the Member States to a centrally governed State.

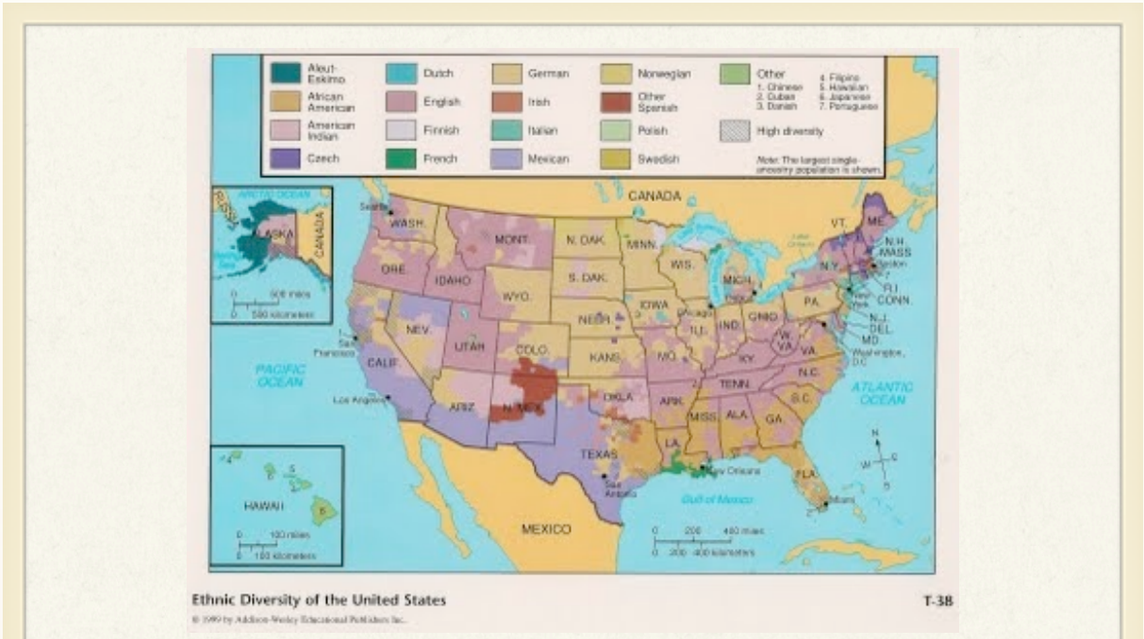
The fact that in a Federation governing bodies operate side by side makes things more complicated for administrators. That is why a Federation – contrary to a Unitarian State – leads to additional institutes to make the federal organization function efficiently. There is, for instance, a need for specific institutions to regulate mutual policy-making, cooperation and the resolving of conflicts: instruments such as formal agreements of cooperation, ministerial committees for mutual consultation, courts of justice. These governing bodies operating parallel require consultation before and after decision-making, which is unnecessary in a State governed centrally. The need for cooperation is the inevitable consequence of the diversity of centers of power. More centers than is the case in a Unitarian State, with disadvantages of its own, for instance a democratic deficit.

As a result of the diversity of centers of power it is sometimes difficult to localize who is responsible for the decision-making. But this is not unique to a Federation. Compromises between and even within governing bodies always presuppose a shared responsibility of the participating decision-makers, regardless of the organizational model of the governing body. Much will depend on the differences in society, the electoral system, the party-political landscape (whether power is shared through a coalition), and on decision-making procedures.

With all this in mind, what conclusions could we draw for Europe?

Firstly, conclusions backed by the factual, current situation in Europe.

Europe presents linguistic, social and political diversity, stemming from a century-long restless history. That diversity is in no way diminishing today. On the contrary, it is increasing both socially and politically, both internally and externally, fed by globalization and migration.



Etnic diversity in the USA. Proof that there is no need for a homogeneous people in order to create and maintain a federal state.

More than ever before, Europe's internal diversity is sensitive. This is proven by the defederalization or regionalization of a number of centrally governed Member States, including Belgium, Italy and Spain. Even the United Kingdom does not escape from this 'downward' trend: the 'devolution' is a form of decentralization in favor of shifting more decision-making power to Northern Ireland, Scotland and Wales. Isn't this prove that States as we know them now, nation-states or others, no longer perform optimally for their citizens? Apart from this institutional evolution, which is fostered internally within States boasting a diversity of languages, diversity is increasing in all European States through migration, both from within and outside of Europe.

Externally, Europe's welfare, influence, stability and security are threatened. Many factors are causing these threats, such as the emergence of the BRICST-group, demanding for themselves markets and power in international organizations, including the UN-Security Council and the International Monetary Fund; furthermore, migration to Europe and turbulences in and around the Middle-East, for instance the so-called 'Arabic Spring'.

On the one hand the age-old mosaic of societies in Europe and its heavy past prevent the existence of one centralized governing body in one center of power. That would never gain any political support. Moreover, such governance would not be effective or efficient. On the other hand, the constituent parts of Europe will never again have control over their destinies independently – that was lost in 1945 – by returning to the stately independence or sovereignty 'après la lettre'. This has become a myth since the Westphalen type of sovereignty has lost its value over a period of sixty years. The typical Westphalen nation state has ceased to exist because the colonies will not resurrect, the countries that delivered

cheap resources and bought industrial products from the motherland.

Besides, more than ever before our economies are less impeded by distance: transportation links are more efficient than ever before and many services are delivered from a large distance. Even agricultural and industrial products are transported and sold worldwide. Protectionism is not only damaging – as it provokes countermeasures form other countries – it is also useless.

As Guy Verhofstadt states in his 15th Mandeville Lecture in 2009 at the Erasmus University in Rotterdam (the Netherlands): *"Protectionism is outright against each fiber of the European project. Against each European logic. The European welfare is exactly build on mastering any form of protectionism. Because we know from the past that this is not a solution for the crisis, but instead is aggravating the crisis. This has been the case in the Great Depression. This has also been the case after the First World War. In short, the road out of the crisis is not in less Europe and more nationalism, but just in more Europe and less protectionism. Europe is not the problem, but the solution."*

I share the opinion that a federalized Europe on the one hand will be capable of answering global challenges, and on the other hand will be giving right to this internal diversity, more than at present. A Federation does not only deliver more advantages, its disadvantages are clearly less than in the present intergovernmental system.

The existing construction is dying, as is proven time and time again by the increasing number of European summits, resulting only in the agreement that another summit is necessary, while the stock exchanges fluctuate due to the lack of any stability, debts are increasing and the conflicts between and within Member States continue to escalate.

In view of this situation one may assume that a federal organization for the European continent would fit like a glove. An autonomously operating governance system on two levels – one on the European level and one on that of the Member States – represents the only way out of the present tunnel vision regarding the crisis of, and within, the EU. The financial crisis is continuously growing, and economic instability increasing, due to the fact that European problems are attacked not by the whole but by the Member States separately.

Now the conclusions to be drawn from the political institutions that are operating under European flag, but controlled by intergovernmental decision-making by the European Council.

In my view the disadvantages of any Federation become irrelevant when compared to the present intergovernmental system. What the EU is showing us right now, is far from a good example of simple and transparent governing. Firstly, I will analyze the decision-

making process and I will test its transparency. Then I will test its simplicity.

At this moment in time the European Union cannot withstand the test of transparency:

1st. The agenda's per nation State predominate the common European decision-making in formal and informal councils of national ministers. You were correct to point this out at the start of our conversation. They are doing so while the institutions representing the whole (or that should represent the whole, I will come back to this later), namely the European Parliament (EP) and the European Commission (EC), are standing aside. Neither has any control over the European Council of Heads of States, who determine by consensus Europe's political decisions (the so-called 'conclusions'). Heads of States who continuously engage in political barters. The European Parliament does not have the right of initiative to make laws. That right belongs to the European Commission, who is, you will guess rightly, intergovernmental composed: one Commissioner per Member State; and that controls its performance. I would like to quote late Karel van Miert, former Euro Commissioner, from an interview in 2006 in Knack Magazine: *"Appointing one Commissioner per Member State creates a structure in which the national interests of the 25 Member States play a strong role. Some take their task seriously and defend the general interest. But others come from their capital to read out their cheat sheet."*

2nd. The Member States participate on an unequal basis in the factual decision-making process within the European Council of the Heads of States. And Member States, smaller than Spain, do not participate at all in the informal meetings of members of the European Council who prepare the meetings of that Council. Rather, they are confronted afterwards with the deals made by the bigger Member States and pressed to conform to those decisions. This is flagrantly the case with respect to the debt crisis within the Eurozone. It reminds me of the 'Directoire' of about five persons who were governing France (1795-1799), resulting in the bankruptcy of the State and paving the way for Napoleon's dictatorship. Something to reflect upon, maybe?



Behind a closed door the leaders of 28 European countries take centrally imposed decisions to uniform the EU-states.

3rd. The Councils of European Ministers seldom decide by absolute majority (each Member State has one vote), but invariably by a

qualified majority (a Member State has a certain number of votes, relating to its demographic and economic weight); essential matters such as fiscal subjects should be decided upon unanimously. This weighing of the votes or the application of a veto invites time and again national Ministers to open their national agendas.

4th. The decision-making process takes place behind closed doors, not in an open debate in parliaments, because the process is completely influenced by diplomacy and lobbying. We see the same story with respect to the diversity of rules and procedures.

The EU Treaties allow through differentiated decision-making the construction of 'closer cooperation' by at least nine Member States (Article 20, section 2, Treaty of Lisbon). This is the so-called Europe of two different speeds, creating the Treaty of Schengen (at least nine Member States lifted border controls for migration) and the Eurozone (17 out of 27 EU-Member States have one currency, the euro). The European Union has a lot of powers. No less than five types (exclusive, shared, et cetera). It also boasts an arsenal of legislative instruments (the so-called secondary regulations, with the European Treaties together forming the primary regulations), four kinds of binding legal acts, especially the regulations, the directives and the decisions made by the Council. In addition, there are many non-binding legal acts.

Can a European Federation be any uglier than this multi-headed dragon? A cat would not find her own kittens in this institutional and legal maze. The cause of this, in my opinion, is that European politicians are afraid to see Europe working as a proper Federation. This fear may have to do with a desire for power, but also with a lack of self-confidence since the elective behavior of European citizens is becoming increasingly less predictable.

All this is leading to the conclusion that the advantages of a European Federation are enormous and that the disadvantages are negligible, compared to the mist and complexity of the present EU and the fundamental lacks of its intergovernmental approach. What are the members of the Parliament and the EU-Commissioners waiting for? Why don't they try to escape from under the 'Directoire' of the Heads of the largest States, taking the initiative to present European society with the concept of a federal Europe?

Re 3. Now your question why I prefer to speak about federalism as an organizational matter, rather than a stately one.

Federalism is not uniquely reserved to States. It is applicable within any form of organization. Federalism and federal States are not synonymous. Political scientists, among whom Daniël Elazar, Preston King and Michael Burgess, have emphasized that Federalism is a specific administrative structure which does not need to be – per se – stately or even publicly. Elazar has pointed out that federalism can be applied in any organization, even in the private

sector. Other authors support this point of view when describing Federalism as a model of organization and not its application, the Federations. Some joint ventures are or become Federations of multi-national private companies. A workers organization can also be a federation, as is the case in the Netherlands.

I would like to quote Michael Burgess from his contribution in 'Federalism and Federations in Western Europe' in 'Origins of the Federal Idea' of himself and S. Rufus Davis: *"The federal principle is, above all, an organizing principle, and it follows logically from this that federation is the organizational form which corresponds to this principle. (…) Federalism can be taken to mean ideological position, philosophical statement and empirical fact. (…) (L)et us here take federalism to mean the recommendation and sometimes the active promotion of support for federation. (…) Although, as King notes, there may be federalism without federation, there can be no federation without some matching variety of federalism."*

With this, Burgess tells us what I stated before: there are as many phenomena of Federalism as there are Federations, public organizations and others. This is why I prefer to speak of the necessity of a European Federation, in whatever name, and not of a Federal State Europe. Avoiding the word 'State' lets people understand that a European Federation, if worthy of that name, does not necessarily have the monopoly of force which is the case in the classical stately functioning of saving internal order and in warfare. This may mean that a European Federation may merge and share policing and military forces, but that it will need a unanimous decision by all Member States to start a war outside the Federation.



Tombeur, August 2012

PAPER 8

Tombeur replies to the questions put forward by Klinkers in Paper no. 6, Paragraph B and C. Can we say without doubt that Althusius was the founding father of federalism, or did he combine this concept with confederal thoughts? Furthermore, there is the question as to why the State of Texas left the Federation – together with some other Southern States – which caused the Civil War in 1861. Did these States maybe barter a specific charter that allowed them to leave the Federation whenever they wished to? The answer to this question may be important for the position that the United Kingdom may claim within a European Federation.



Alcibiades

FAQ 10: What does a country lose when joining a Federation?

Nothing. It actually receives something extra, namely the certainty that those interests that cannot be efficiently taken care of (any longer) by the country itself will be taken care of by another body.

FAQ 11: Do many people know what a Federation actually is?

No. Due to false information by Euro-skeptics and Euro-haters many people think that a Federation is a super state or an empire, which is absolutely not the case; on the contrary. The EU's present intergovernmental system – in which government leaders in the European Council can decide whatever they wish and subsequently can enforce these decisions to be executed in all member states – is a super state.

FAQ 12: Are some Federations better than others?

Yes. Sometimes Federations are created incorrectly, both constitutionally and institutionally. Which leads to an early death or to a deficient functioning. See for examples Papers no. 18 and 19.



MICHAEL BURGESS

"Political authority should be organised in a manner which accurately reflects the natural diversity of society. This social differentiation springs from freely formed bodies and associations of citizens which do not owe their existence to the state."

Re: Paper no. 6, Paragraph B

Let's go back to the 17th century in order to answer your question as to whether Johannes Althusius invented federalism or confederalism. The reason for your question was that Wikipedia characterizes him as a confederalist. This requires a detailed answer.

Althusius' original work 'Politica methodice digesta' was written in Latin. To make things easier there is an English translation from 1964, with introductions by the pre-eminent American expert in federalism Carl Friedrich and translator Frederick S. Carney. I shall use those introductions to reply to your question on Althusius' political statements. In addition, I will deal with Burgess' discussion about Althusius' social political theory, as quoted before from his paper 'Federalism and Federations in Western Europe'.

In his foreword of the translation of Althusius' work, Carl Friedrich writes:

"What Althusius undertook to do was to interpret all political life in terms of the 'pactum', the bond of contractual union. Beginning with the family as such a natural and co-organic entity, he suggested that on successive levels of political community those who live together in order and harmony and whom he called 'symbiotes' are united by a pact, expressed or implied, to share things in pursuit of common interests and utility. The village was for him a federal union of families, as was the guild; the town a union of guilds; the province a union of towns and villages; the kingdom or state a union of such provinces; and the empire a union of such states and free cities. In a sense, this was a concept which transformed into a cooperative constitutional order the feudal hierarchy of successive levels of lord and vassal as mirrored in the medieval writings already alluded to.

In his introduction Professor Carney develops in greater detail how this theory is worked out. The key to this concept of federalism is that on all levels the union is composed of the units of the preceding lower level. Thus, when we arrive at the top, the members of a state are neither individual persons nor families, but are politically organized collectivities, namely, the provinces and cities. This construction contrasts sharply with the later American concept of a federal union composed not only of states, but of individual citizens as well. This does not mean, as the Federalist argued against the Confederation, that the union is less closely knit, but rather that the 'pactum foederis' or 'Bund' (bond of union) is conceived in less purposive and individualistic terms; it is merely the outward form, the institutionalized framework of an existential communal reality. This reality consists in the sharing of values, interests, and beliefs — to use modern terminology for Althusius' 'communicatio mutua rerum, operarum et juris' — i.e., it is existential community. As such, it transcends the willful determination of the participants; it comes into being as part of their very nature, and merely needs to be recognized and consciously organized in the pactum or bond of union which makes it explicit.

The federal principle is explicitly applied also to the growth of a territorial dominion, and here the distinction between the federal and the confederal union, as it has been called in modern parlance, is explicitly developed. However, the distinction is more sensibly put by Althusius as a confederation which is either full (plena) or not-full (non-plena). These terms bring out much better the relative character of the difference. As Althusius develops it, the distinction between the full (Carney suggests: complete) and the not-full (Carney suggests: partial) confederation resembles that later made between the 'Bundesstaat' and 'Staatenbund', between the federal and confederal union, because it turns upon whether the confederates retain their sovereign rights, their 'jura majestatis', or not. What matters more is that through this notion of an extension of government by consensual federation the basic solution to ever-widening political cooperation is indicated."

In other words, Althusius did not use the word 'Federation' as such but the terms 'full (plena) confederation', which nowadays we call a 'Federation' and 'incomplete (non-plena) confederation', which we now plainly call a 'confederation'. According to Althusius, the differentiation lies in whether sovereign rights ('jura maj-

estatis') are retained by the people. This may not lead to the conclusion that Althusius does not accept a sharing of sovereignty in both political models. However, the question remains in which location we can find this sovereignty. This is made clear in the translator's introduction of Althusius' work.

In his introduction translator Frederick Carney explains Althusius' theory about sovereignty as follows:

"… Althusius divides the public association into particular and universal. The particular, in turn, is divided into the city and the province, and the universal is identified as the commonwealth ('res-publica'), or realm ('regnum'). The particular association does not possess sovereignty, while the universal does. It should be noted, however, that the city of Venice, because it possesses sovereignty, has the status of a commonwealth. Furthermore, while a city is composed of families and collegia, the province is formed of various kinds of local community ranging from the rural hamlet to the metropolis, and the commonwealth is constituted of provinces and such cities as have the rights and responsibilities of provinces in the assemblies of the realm. (…) The commonwealth, as previously noted, differs from the city and province in that it alone possesses sovereignty. This is to say, only the commonwealth recognizes no human person or association as superior to itself. But where in the commonwealth does this sovereignty reside? Jean Bodin, to whom Althusius was highly indebted for so many of the characteristics of his political system, attributed it to the ruler. Althusius disagrees. His position, which follows consistently upon the principles he has already elaborated in smaller associations, is that sovereignty is the symbiotic life of the commonwealth taking form in the 'jus regni', or in the fundamental right or law of the realm. Since the commonwealth is composed not of individual persons but of cities and provinces, it is to them when joined together in communicating things, services, and right that sovereignty belongs. Therefore, it resides in the organized body of the commonwealth, which is to say in the symbiotic processes thereof. This organized body is also known to Althusius as the people."

From this text it is clear that Althusius recognizes sovereign rights and rights of social relationships and political institutions other than Republics and Monarchies, for instance those of the city-state of Venice. To be honest, one should also take into account these subtleties from Althusius. Firstly, he uses the term 'sovereignty' in a more narrow sense: relating to the sovereignty of a Republic or a Monarchy because those governing systems do not recognize a higher power. Furthermore, his point of view is that sovereignty is located in the cooperation by public associations of citizens, for instance guilds, cities and provinces. In other words, sovereignty is exercised jointly, thus it is shared, which is a typical aspect of federalism. This opinion does not characterize Althusius as a classical or modern federalist, because – for instance – he does not propose to allow individual citizens to participate in this sovereignty, as Friedrich explained above. This would mean – when we look at it from a modern institutional viewpoint – that a federal organization would only have an organized representation by the Member States and not by the people. If this would apply to modern Federa-

tions, Germany would have the 'Bundesrat' (representation by the Länder, the German Member States), but without the 'Bundestag' (representation by the people). Or, for the United States, it would mean the existence of only the Senate and not of the House of Representatives. Nevertheless, Althusius claims that sovereignty is with the people, but only in an organized way of decision-making. That is why – in my opinion – Althusius may be seen as a pre-federalist.

Michael Burgess states in the context of Althusius' social-political theory something similar after having mentioned that the tradition of pluralism in continental Europe goes back four centuries, which is three centuries further than the British tradition. First, he notices that government at the time was a reflection of society's diversity, expressing itself in the creation of free associations. I quote: *"Political authority should be organised in a manner which accurately reflects the natural diversity of society. This social differentiation springs from freely formed bodies and associations of citizens which do not owe their existence to the state."*

> *"Religion is important for humanity, but it should evolve with humanity. The first priority is to establish and develop the principle of pluralism in all religious traditions. If we, the religious leaders, cultivate a sincere pluralistic attitude, then everything will be more simple. It is good that most religious leaders are at least beginning to recognize other traditions, even though they may not approve of them. The next step is to accept that the idea of propagating religion is outdated. It no longer suits the times."*
>
> *Dalai Lama*

Furthermore, he emphasizes: *"It is widely acknowledged to have begun with the ideas of Althusius who first formulated the theoretical foundations of a differentiated society in the early 17th century."* Burgess explains that Altusius' ideas should be understood in the context of medieval opinion regarding organic structures, based on the natural law that people are free to organize themselves in associations, both religious and secular, that form the foundation of the State. Now, the author reaches the core of the matter by stating: *"These associations … which antedated the modern state and owed nothing to it for their existence."* And: *"Althusius accordingly identified the family, the association, the commune, the province, and the state as a kind of rising hierarchical nexus of complex social institutions which together created the state, were incorporated within it and effectively intervened between it and the individual. Small wonder, then, that Althusius has been variously regarded as a medieval corporatist, an early pluralist and a primitive federalist. (…) The idea that the various communes, guilds, corporations and other associations were independent of the state was thus already deeply rooted in the continental European tradition of political thought …"*.

If one reads this text by Burgess carefully, it can be assumed that Althusius proposed federalism as a natural process for creating a State, without using the actual word. Why? Because he regarded those free associations, whether or not they were representing a public interest, as the component parts of State building. In other words, he saw them as constitutive elements. Althusius positioned associations equally side by side, but also united them as a group

within the State. This is nothing other than federalism. Thus no confederalism, for the aforementioned reasons, of which the essence is: several centers of power operating apart from each other and next to each other, while also forming one governing whole exercising power itself. Each governing body is doing so within certain boundaries. Althusius is a federalist 'avant la lettre'. Thus Wikipedia is either wrong or at least lacks nuance. It proves also some carelessness, by using 'confederal state' – a contradiction in terminis.

Indeed, the label 'federalism' or 'confederalism' is irrelevant when looking at the Covenant of States or other organizations. It is the content of the Covenant that matters, just as is the case with other contracts of a private or public nature, treaties for instance. The content of the Covenant, or whatever name the act carries – for instance a constitution, charter or treaty – must present, in order to be a Federation in formal terms, obligations which can only be changed by the mutual consent of all partners involved. To compare this with obligations within the realm of private law: they are created by the mutual consent of all partners, but can be annulled unilaterally. A marriage contract, for instance, can be compared with a confederation but not with a Federation, because a Federation cannot unilaterally be annulled. Thus, one should not look at the label of a State to recognize whether one is dealing with a Federation. Instead, one has to investigate the content matter of the binding act. A well-known example of the fact that the label does not mean a thing, because it does not reflect the legal status of the State, is Switzerland. This country still calls itself a 'confederation' (the 'Confederatio Helvetica'), although it has become a real Federation since 1848, following a short civil war (the 'Sonderbundkrieg').

Re Paper no. 6, Paragraph C

Now the matter of Texas and a handful of other States which unilaterally left the American Federation. The question was: would it be possible to assume that Texas had received – before entering the Federation in 1845 – a special charter, including the right to decide by itself if it may one day leave the Federation. You think that an answer is important with respect to the position of the United Kingdom if it was invited to join a European Federation.

With respect to this matter I can make the following observations. In order to enter a Federation each State or organization is subject to the same conditions: all federated members possess the same powers under the same conditions. In relation to each other they have the same sovereignty. No member is allowed to leave a classical Federation unilaterally. This rule is applied, for instance, in Canada where the province of Québec does not have the right to leave the Canadian Federation and also does not receive a specific statute that differs from the legal status of the other provinces. A federal organization does not allow the departure of one member without the consent of all other component parts, because leaving would alter the obligations of the other governing bodies and their respective relationships, also on the federal level. It requires con-

The Texas Ordinance of Secession (February 2, 1861)

The Texas Ordinance of Secession was the document that officially separated Texas from the United States in 1861. It was adopted by the Secession Convention on February 1 of that year, by a vote of 166 to 8. The adoption of the ordinance was one of a series of events that led to Texas' entry into the Confederacy and the American Civil War.

The ordinance text is much less known and less accessible to the general public than the Texas Declaration of Independence. According to some historians, however, it ranks equally with the earlier document in its impact on Texas.

A declaration of the causes

which impel the State of Texas to secede

from the Federal Union

The government of the United States, by certain joint resolutions, bearing date the 1st day of March, in the year A. D. 1845, proposed to the Republic of

Scroll

Are the United States of America an exception to this classical model of a Federation?

No, the US are considered to be the first, classical Federation. You have told before that the federal Constitution came into force in 1789. At that moment the US became a Federation who performed constitutionally external actions as one State. I leave again aside that a federal model is not interested in the question where the gravity of the power should lie; whether with the whole or with the component parts; that is a matter of concrete application in whatever Federation.

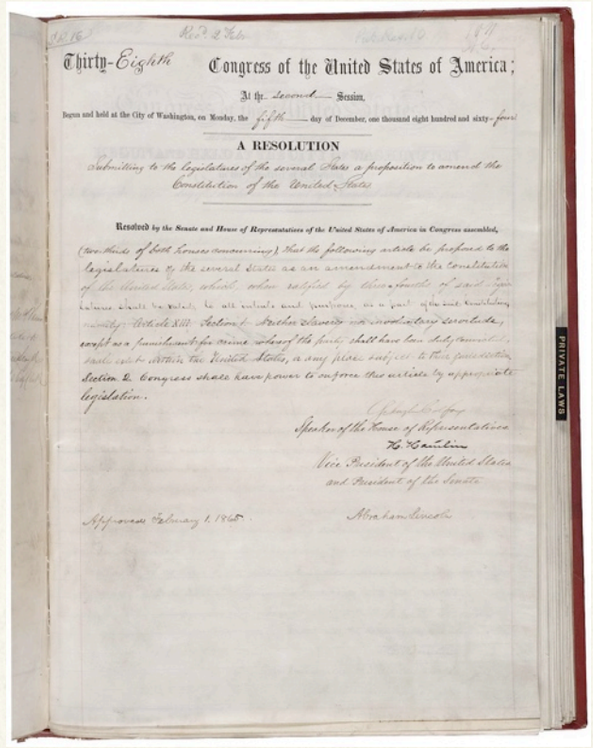
sensus by all bodies for this to be possible. Making differences in the legal status of member States is also not allowed because that would damage the equality of sovereignty. This is the case in the European Federations of Germany, Austria and Switzerland. Spain is not a Federation, due to the fact that each region has a different statute, fixed in bilateral contracts with the central government in Madrid. Spain is a regionalized State, as is the case in Italy.

The States that created the Federation in 1789 were joined, in later years, by twenty one other States, including Texas. At the moment that this State left the Federation, together with about ten other Southern States, they did this illegally: they committed secession on their own account, though the Constitution did not allow that. President Buchanan was afraid to fight this secession. He left that battle to his successor, Abraham Lincoln, who was prepared to fight this violation of the Constitution with guns. This has led in 1861 to the Civil War, mentioning aside that Lincoln not before 1863 forbade the slavery. Only after a laborious victory in 1865 the Northern States could save the Union.

From that moment on everybody understood not only that unilaterally leaving the Federation was in breach of the Constitution, but also would be answered with a battle.

The tensions between those who choose for a strong central power and those who were fighting that idea, played also a role. They existed already during the writing of the Federalist Papers at the end of the 18th century. It has led between 1825 and 1856 to the creation of two new political parties. The federal power became steadily more important, but kept being modest until the 'New Deal' of President Franklin Delano Roosevelt in 1933. Nevertheless, this fault line has never disappeared. It still exists between the Democrats that favor more power for the federal government and the Republicans who fight this and want to give the power back to the Member States.

Whether Texas had bartered – upon entering the Federation in 1845 – the right to leave the Federation unilaterally, is not mentioned in the literature that I have consulted. But there may be another explanation, namely the concept of 'nullifying'. Verhagen's book 'All Presidents', that you have mentioned before, indicates a certain type of behavior in the Southern States around 1830, namely to arbitrarily adopt the right to reduce federal laws that were not to their liking to nil. This was called 'nullifying'. What they themselves considered to be unconstitutional, suppressing or unjust, was declared by them as not applicable. From a legal point of view this nullifying had zero significance. But in practice, with respect to the behavior towards the Constitution, it did indeed have significance. The Southern States had joined the Federation under the guarantee of the preservation of slavery. When Abraham Lincoln won the elections they interpreted this as a sign that slavery would be abolished, a matter that they wanted to 'nullify' immediately by leaving the Federation in a demonstrative manner, contrary to the Constitution, and by establishing a Confederation by themselves.


Thirty-Eighth Congress of the United States of America;
At the Second Session,
Begun and held at the City of Washington, on Monday, the fifth day of December, one thousand eight hundred and sixty-four
A RESOLUTION
Submitting to the Legislatures of the several States a proposition to amend the Constitution of the United States
Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,
Section 2. Congress shall have power to enforce this article by appropriate legislation.
Speaker of the House of Representatives
Vice President of the United States and President of the Senate.
Approved February 1, 1865.
Abraham Lincoln
PRIVATE LAWS

The 13th Amendment to the US Constitution, abolishing slavery. Drafted in January 1863, adopted by Congress in December 1865.

This is, in my opinion, the correct interpretation of what happened in those days; a legally incorrect manoeuvre, but nevertheless a political fact.

This lays to rest your question with respect to Texas and other States leaving the Federation. But your question with respect to the United Kingdom remains relevant. If there will be a European Federation, with or without a transfer of the legal aspects of the

present European Union, then each country in Europe has to make a choice, including the United Kingdom: joining or not joining the Federation; completely inside or outside. Federalism does not allow partial or conditional memberships. It is all or nothing. Should the obstinate UK wish to leave the Federation after a while, then we have only a political, not a legal, fact to deal with, with all the consequences involved.

The British Euro Parliamentarian Andrew Duff demonstrates in 'On Governing Europe' that he understands well the all-or-nothing concept of federalism. Nevertheless, he seems to try to barter an exception to that rule. Speaking of the necessity of Europe's fiscal-economic federalization he states: *"Meanwhile, the coalition government in the UK has decided not to take part in this federal process which it cannot stop even if it wanted to. The pace of European integration is now rapid and its destination much clearer than it has been for many years. As the British government and parliament will not share that destiny, alternative arrangements have to be made for the UK. Pro-Europeans in Britain must not abandon the battlefield. We should work to ensure the ultimate success of Europe's federal union even if the UK takes another stage or two to get there."*

It is not completely clear what he means by the necessity to make 'alternative arrangements' for the UK. But those alternatives can never have the character of a partial or conditioned membership of a European Federation.

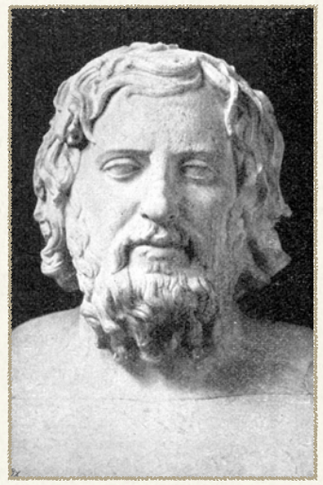
The establishment of a European Federation does not prevent, however, intergovernmental cooperation between members and non-members for other policy domains than the domains that are reserved for the Federation. These two organizations together, the new Federation and the old intergovernmental Europe, within which States can participate in several domains of policy-making, I have once called: interfederation.



Tombeur, September 2012

PAPER 9

Finally, Tombeur reacts to Klinkers' observations in Paper no. 6, Paragraph D: what could or should be the source for building a European Federation? At the time of concluding their federal Constitution in 1789 the Americans had one all-encompassing source from which they drew their intellectual energy and vigor: freedom. This does not apply to Europe. We have been free for a long time. But would there not be another source that gives us the strength to switch the lever to a Federation? After careful consideration of three possible sources of energy Tombeur concludes that neither the original goal of economic integration, nor the endeavor for the rule of law throughout Europe, but the new global challenges and threats – also in the domain of trade relations – should be the new driving force towards the federalization of Europe. Global challenges that Europe is facing all by itself.



Xenophon

FAQ 13: Don't you need one homogeneous people and one homogeneous language in order to create a Federation?
No, this is a popular misconception which has been spread around without any foundation. Even in the USA not everyone spoke or speaks English. Millions of immigrants continue to speak their native language. Moreover, the difference between citizens of Vermont and Texas are as large, or maybe larger, than the differences between inhabitants of Finland and Greece. And did you know that federal Switzerland acknowledges four different government languages as official languages? And that federal India acknowledges no less than 22 languages? The EU acknowledges 23 languages.
See Papers no. 15 and 20.



ANDRE GLUCKSMANN

"Europe's problem is its passivity. It wants peace and quiet. And who wants peace and quiet is not militant anymore. (….). It does not seem to me a superhuman endeavor to find a solution for the financial crisis. But European leaders lack a global perspective. The reason for Europe's existence is lost."

Re Paper no. 6, Paragraph D

In a recent interview the French philosopher André Glucksmann draws our attention to several open wounds within Europe, the biggest being that Europe no longer knows why it exists. Glucksmann states: *"Europe's problem is its passivity. It wants peace and quiet. And who wants peace and quiet is not militant anymore. (….). It does not seem to me a superhuman endeavor to find a solution for the financial crisis. But European leaders lack a global perspective. The reason for Europe's existence is lost."*

This brings us to the essence of the dilemma with which Europe is confronted: your question about the driving force towards a federal Europe. What force could propel Europe into that direction? Should that driving force not exist, there will indeed be no federal Europe.

My answer – esteemed Klinkers – starts with the approach of European cooperation since 1950. Inspired by the sociologist professor Luc

Huyse I would like to quote *"Everything will pass, except the past."* The past continues in the present. In Europe this is tangibly the case.

Since 1950 cooperation and integration on a European scale have been based on three political motives. I will investigate if these sources of political energy are still active at present. The three original driving forces were:

1. Preventing the occurrence of competing coalitions or alliances of States, following the Vienna Congress in 1815, and especially the avoidance of the resurrection of antagonisms within Europe, in particular between Germany and France.

2. Protecting specific values such as individual rights and freedom, the rule of law and representative democracy, in order to prevent dictatorships in Europe.

3. Answering to internal threats by creating the welfare state. And answering to external threats – in particular to the assumed threats by the Soviet Union – through military cooperation and mergers of military forces, in order to offer security against actual or potential enemies.

In other words, trading war for peace, trading dictatorship for representative democracy and trading poverty for stability, growth and prosperity for everybody, through economic integration and military cooperation. That was the driving force for Europe's process of integration since 1950. After 1945 Germany and France understood that their rivalry could lead to mutual destruction. This was also understood by their allies because they were dragged into that conflict. Nevertheless, the creation of a European Defense Community (EDC) between the three countries of the Benelux, France, Italy and West-Germany – with the goal of coming to each other's assistance in case of an attack by a non-Member State – failed. The French Parliament rejected the treaty that was signed in 1952 to establish the EDC; the mistrust of the Germans was apparently still a major factor. Then six States opted for a project of economic cooperation – and even political integration – in such a way that it would make conflicts impossible due to the interweaving of economic interests, especially with respect to industrial production. This integration has led – to a certain extent – to one internal market.

Let's have a look at the assumption that Europe's economy could be considered a driving force towards federalization. What value is still to be found in this premise? I am of the opinion that the European economy as an energy source towards federalization has dried up considerably. Industries have moved both within and away from Europe, especially east- and southbound, also outside of the European Union. The European economy has become weaker on a global scale – with the European colonies becoming independent and the import of resources turning more expensive due to political (instability in the Middle East) and economic causes (growing demand as a result of economic prosperity elsewhere, headed by the BRICST-group). This has led to a growing mistrust within and between European countries, for instance with respect to the internal migration of labor and fiscal or social policies of States; also due to a feeling of dependency, not only on the import of oil. Furthermore, Europe's economy itself has changed: we have become less industrial and more service-oriented; this has

EUROPEAN COMMISSION									
The Winter 2013 Forecast: real GDP									
	2011	2012	2013	2014	+	2011	2012	2013	2014
Belgium	1.8	-0.2	0.2	1.5	Bulgaria	1.7	0.8	1.4	2.0
Germany	3.0	0.7	0.5	2.0	Czech Rep.	1.9	-1.1	0.0	1.9
Estonia	8.3	3.2	3.0	4.0	Denmark	1.1	-0.4	1.1	1.7
Ireland	1.4	0.7	1.1	2.2	Latvia	5.5	5.3	3.8	4.1
Greece	-7.1	-6.4	-4.4	0.6	Lithuania	5.9	3.6	3.1	3.6
Spain	0.4	-1.4	-1.4	0.8	Hungary	1.6	-1.7	-0.1	1.3
France	1.7	0.0	0.1	1.2	Poland	4.3	2.0	1.2	2.2
Italy	0.4	-2.2	-1.0	0.8	Romania	2.2	0.2	1.6	2.5
Cyprus	0.5	-2.3	-3.5	-1.3	Sweden	3.7	1.0	1.3	2.7
Luxembourg	1.7	0.2	0.5	1.6	United Kingdom	0.9	0.0	0.9	1.9
Netherlands	1.0	-0.9	-0.6	1.1					
Austria	2.7	0.7	0.7	1.9	**EU**	**1.5**	**-0.3**	**0.1**	**1.6**
Portugal	-1.6	-3.2	-1.9	0.8	Croatia	0.0	-1.9	-0.4	1.0
Slovenia	0.6	-2.0	-2.0	0.7	USA	1.8	2.2	1.9	2.6
Slovakia	3.2	2.0	1.1	2.9	Japan	-0.6	1.9	1.0	1.6
Finland	2.8	-0.1	0.3	1.2	China	9.3	7.8	8.0	8.1
EURO area	**1.4**	**-0.6**	**-0.3**	**1.4**	**WORLD**	**4.2**	**3.1**	**3.2**	**3.9**

really become global thanks to transport technologies, with or without internet. Since the 1960s the private sector has armada's of effectively operating multinationals, the political world has hardly any.

In short, Europe has become economically dependent on the rest of the world. Conclusion: due to the fact that Europe is at present less master over its own economy than it was half a century ago, a resurrection of a genuine European economic driving force towards federalization seems unlikely. Europe is drawing its existence from world-wide imports and exports, thus protectionism is no longer an option, let alone for individual States. And at the time that Europe performed a supranational and courageous action it handled things in a completely wrong way: Europe created a single currency without establishing a unitarian economy within that monetary zone. Very ambitious, but rather stupid: any economic theory is telling us that the currency is the expression of the economy, not the other way around.

The second possible driving force, the guarantee and enhancement of a representative democracy and the legal protection of individuals, is a European possession since the fall of the Berlin wall in 1989. A dictatorship west of Belorussia is nowadays unthinkable. The democratic radiation and therefore the democratic magnet that the European Community, now European Union, the Council of Europe and its Committee for Human Rights, and the Court of Justice at Strasbourg, have offered to the rest of Europe has been achieved. Weak supranationalism and strong intergovernmentalism have played a positive role in disseminating democratic governance and the rule of law, with the Court of Justice in Strasbourg being the final goalkeeper. This has led to constitutional results in eastern and southern Europe, while it has also promoted the free flow of people throughout Europe. Totalitarian regimes within and at the borders of Europe have disappeared, including the Soviet Union, the touchstone for a democratic Europe during the Cold War. For the post-war generation this is evident. Maybe I am wrong but my conclusion is that the driving force of democratization can no longer be considered a vital instrument towards a federal Europe. It has fulfilled its job. This energy source has also dried up.



The question arises if Russia's taking over of the Crimea in March 2014 should be considered as a new and unexpected threat for Western Europe?

The two aforementioned driving forces for federalization have lost their power. The first one due to losing economic autarchy and steadily growing prosperity. The second one due to achieving its goal, democratic stability. What is left as another possible driving force?

It may be possible – theoretically – to consider uniting identities (assuming a divided European identity throughout Europe) as such a driving force. This has been the case elsewhere in the world. But the facts in Europe will prevent this. Europe possesses the largest cultural diversity of the five continents. On a relatively small periphery – strictly a peninsula of Eurasia – it has dozens of languages and different behaviors, each based on its own values and norms. Religious differences have caused these social-political fault lines; throughout Europe opinions, and thus behavior, differ.

There is a fault line between Christianity and Islam in the Balkan countries. Within Christianity itself at least three groups exist with differing norms: the protestant, the roman-catholic and the orthodox-catholic community. There are 23 official country languages in 27 Member States, but there are also dozens of vivid regional languages, with or without a formal statute. There are hardly ten countries in Europe that may call themselves culturally homogeneous – which does not mean that their homogeneous culture gives them satisfaction with respect to their borders. Look, for instance, at Central-Europe and former Yugoslavia – explaining the complexity of country borders is a long story, too long to deal with here. Nevertheless, I would like to state that Europe – since the victory conferences in Jalta and Potsdam – is living in the past as far as its territory is concerned. With the exception of the Oder-Neisse border between Germany and Poland, and the States that arose as a result of the disappearance of Yugoslavia, Czechoslovakia and the Soviet Union. This aspect of country borders will be dealt with later.

This isn't all, as far as diversity is concerned. There are also two fundamental differing law systems in the European States. On the mainland, national legal orders have arisen based on Roman law and common law. This has been followed – since Napoleon – by a general codification in written codes. This has enhanced the equality of rights and more legal protection, although at a cost: less internalizing of the rule of law by the people. On the British islands in a parallel manner a completely different system has arisen that has been preserved through the ages, having escaped from the French Revolution: legality and law are no projections of the ideal, as is the case on the mainland, but are based on precedents, pointing at the concrete needs of conflicting people seeking their rights empirically. The travelling judges of the King integrated common law. For Britons the text of a law is a minimum, an understatement for doing or not doing something; for people on the continent the law is a maximum, a model of ideal behavior (which of course never occurs). Moreover, a formal legal norm in orthodox Eastern Europe has less value than elsewhere in Europe, because there the exercise of power always prevails, with or without new rules – people in power do not take into account any rule of law, they can do whatever they want. This causes misunderstandings in Europe. The differing opinions about power and legality between parts of Europe is clearly shown in dealing with law-making and its enforcement.

Moreover, with respect to Europe's diversity, this continent is now comprised of more States than ever before: as a result of the disintegration of the Soviet Union, Czechoslovakia and Yugoslavia 18 new States have arisen since 1990. In the previous century they have never or hardly been independent States. The new or renewed States cherish their recently acquired or regained independence – they think and act according to pre-war patterns. This makes them suspicious against the European Union of which they became a member or of which they wish to become a member for mere economic reasons. One could make the statement that Europe's constitutional and diplomatic diversity has never been so great.

What then, could be the driving force towards federalization? The third one, protection against (violent) threats from outside seems – at first sight – seems to have disappeared. But is that really true? Due to the dissolution of the Soviet Union? Has Europe's external security since then been safeguarded, with or without the North Atlantic Treaty Organization (NATO)? If this is the perception, the question remains: would that be a correct perception? If not, what then is threatening Europe? These questions seem crucial.

At present, military cooperation within the NATO still exists. A number of Central and Eastern Europe States are NATO-members since they no longer fall under the Soviet Union's hegemony. The NATO operates intergovernmentally under American leadership, although the French do not like to hear this. The first question in this respect should be if NATO offers sufficient protection on the level of 'all for one, one for all'. Many are convinced that this is not the case. This conviction is manifestly proven to be correct, because article 5 of the NATO Treaty, that became well-known throughout the world after 9/11, states that in case one Member State is attacked by a foreign power, "the other member states take measures that they think to be appropriate". Thus, there is no automatic solidarity of all partners when one member is attacked. Why is this? Because the United States – at the time of signing the NATO Treaty – did not want to be dragged into a war between European States and the Soviet Union without having its own decision-making power. In other words, when a NATO-member is attacked by a non NATO-member the other members will consider their options… The European perception of this matter may differ,



Churchill, Roosevelt and Stalin in Jalta, February 1945.

but the hard truth is that NATO does not unconditionally guarantee its members' security.

Apparently, European politicians prefer to look away when their own country's external security and that of Europe as a whole are at stake. Europe's inability to intervene without the help of the United States in the war in its own backyard – between parts of the former Yugoslavia (in 1919 arisen under American pressure at the cost of Austria-Hungary and the independent monarchies of Serbia and Montenegro) – became painfully visible. It was a war between nations in Yugoslavia that could have been avoided if the eleven EU-partners would have accepted the proposal by the 1991 Dutch chairmanship not to accept plainly the borders of the Yugoslavian parts as international borders, but to first discuss and negotiate a change of borders.

Initially NATO was not interested in Yugoslavia, only in the political evolution within the Soviet Union. With the result that those age-old nations continued fighting over the borders demarcating their young States, until NATO, under American leadership, restored order – without establishing sustainable peace. Look for instance at the new States of Bosnia-Herzegovina and Kosovo. Isn't that embarrassing for Europeans? Shouldn't Europe take care of its own territory's security or of a neighboring one? It should be recognized that Europe is acting in a certain capacity. Since 2005 the European Defense Agency (EDA) contributes to military power, but that is merely professional and economical, not political.

Now I return to 1945 and the following decades to look at the American attitude towards Europe. The transatlantic relation is of crucial importance in order to be able to estimate Europe's position in the world. I will add some more examples of military interventions. Leaving aside the conflicts that are and were conducted outside of Europe, under US leadership and with European support. I will also give examples of a political and economic nature.

Firstly, the US allowed in 1944-1945 the Soviet army to advance into the heart of Europe (it stopped only a few hundred miles off the Rhine), though the US possessed the military means, including the atom bomb, to prevent that. Therefore, and due to the US' and the UK's attitude in Jalta and Potsdam – confirming the political situation militarily – Europe was split politically.

One could say: divided as if it had been parceled out. Not only Germany was divided. The new imperium, the US, and the old imperium outside of Europe, the UK, and the even older imperium, the Soviet Union as the successor of tsarist Russia, divided Europe into two spheres of influence. One came to rest under the American imperium, the other under the Soviet Russian imperium. This imperially imposed division has led to political stability and armed peace in Europe; not by the conditional safeguarding of NATO and its article 5.

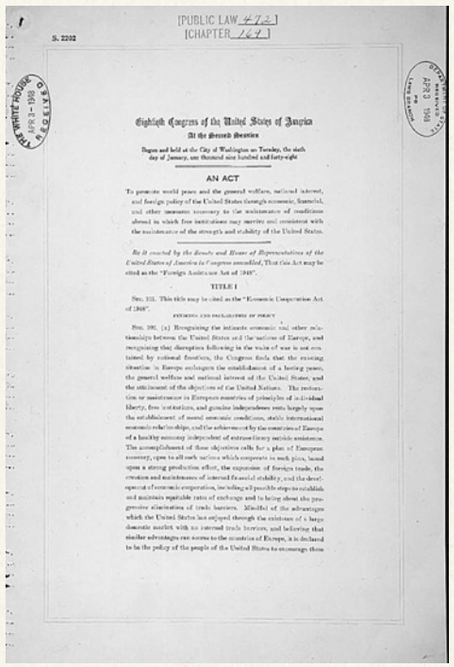
In his book 'After Tamerlane' the British historian John Darwin states: *"The result was the creation of an American 'system' imperial in all but name. (...) In Western Europe, America built an empire 'by invitation' - in the striking phrase coined by Geir Lundestad. (...) The huge*

zone where America provided - or imposed - its strategic protection ... overlapped with the sphere of the new international economy of which America was the pivot. Together they formed the Pax Americana."

During many decades the US accepted this situation, apparently. They clearly preferred this territorial division because this confirmed more than once their position in this sense. For instance, by remaining silent when Eastern Germans (1953), Hungarians (1956) and Czechoslovakians (1968) revolted against the Soviets. Moreover, the US humiliated the British and French allies in the Suez crisis (this does not mean that I approve of this policy by our neighboring countries against Egypt) and supported the Egyptian President Nasser, while the Soviets were busy suppressing the Hungarian revolt. Let me quote John Darwin again: *"In the 1950s it [the Pax Americana] was consolidated rapidly, though not without friction. A critical year was 1956. Washington's refusal to help the Hungarian revolt against Soviet hegemony marked a tacit acceptance of the European partition of 1945-8. Almost simultaneously, by forcing the British and French (through financial pressure) to abandon their effort to destroy Nasser's regime, Washington served notice that its European allies must manage what remained of their imperial space in ways that conformed with its grand design."*

In 1966 the US gave preference to their relations with the Soviet Union: they abandoned the NATO-project 'Multilateral Forces' (MLF) – with respect to the equal possession of atom bombs and decisions about their application – because the planned treaty on non-proliferation became uncertain. To conclude these examples of unfriendly US policy towards Europe's security I would like to recall President Bill Clinton's refusal, in 1994, to grant Hungary, Poland, Slovakia and the Czech Republic (the four so-called Visegrad countries) NATO membership; instead, he put forward the proposal for them to participate in the project 'Partnership for Peace' together with Russia. What would these countries – bearing in mind the suffering they had encountered from their oppressive neighbor – have thought about this? Wouldn't they have felt abandoned and betrayed?

I understand that you would argue: yes, but haven't the US supported Europe in humanitarian and economic ways with the Marshall Plan in 1948? Alright. But this has also been in favor of American enterprises, just as has been the case by the US intervention in both world wars – West and South Europe were industrialized before the US and they have ice-free harbors. The American Robert Kaplan does not contradict


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S. 2202
Eightieth Congress of the United States of America
AT THE SECOND SESSION
AN ACT

First page of the 'Marshall Plan'.


President Truman signs the European Recovery Act

President Truman signing the 'Marshall Plan'.

this with his most recent book, 'The Revenge of Geography'.

The fact that the US pushed their economic interests radically, even if damaging Europe, appears also from later actions. In August 1971, President Richard Nixon announced two measures in order to support the US economy and labor market, which had a negative impact on the rest of the world: 1st increasing import duties by 10%, thus damaging the export from foreign countries to the US, thus also from Europe; 2nd suspending the exchange rate of the dollar against gold. The second action did not only lead to the devaluation of the dollar, but also implied a unilateral halt to the international currency system, supported by the Bretton Woods agreements based on the gold standard. When the European Community claimed that the increase of import duties was against the GATT-treaties the US favored some EC-Member States above others.

Barely two years later the Arabic world once again used its oil as a weapon on the occasion of the fights in the Middle East (the Jom Kipoer War): the Arabic countries placed an embargo on the export of crude oil and increased its price. The US blocked the project of an energy and neighboring policy that had been invented by the EC-Ministers of Foreign Affairs at the end of 1973; a policy aimed at the European Community establishing a conference between the oil producing countries (OPEC) and the oil importing countries of the European Community. The US 'torpedoed' that plan by dividing the European Community, by organizing a conference in Washington in 1974, inviting only the main oil consuming countries. France, opposing this with other plans, was put under pressure and let down by the other EC-countries. 'Divide to rule' is the ancient proverb. The US strategic reason for this kind of action is, of course, the preservation of their monopoly on the acquisition of energy sources in that part of the world.

However, we should not exclude geopolitical changes. In this present financial-economic crisis in the West the US state that within a few years they will not need anymore the gas and oil from the Middle-East. They will win gas from slate, the so called shale gas. This type of gas is already half of their gas production. This makes the price of gas four times cheaper than in Europe. Poland is the first European country to produce gas from slate. I agree with Euro commissioner Karel De Gucht that America, when being no longer dependent on fossil fuels, will alter the existing geopolitical policies. It would not be surprising if this would lead to a power vacuum in the Middle-East and to instability of countries and regimes. Though it might create also new opportunities for other world-powers. How would Europe react to that? Divided or unanimous? With what means?

A political matter that the US wanted to counter with economic sanctions against the Soviet Union was the putsch in Poland and the prohibition of the free union Solidarnosz at the end of 1981. The European Community, then chaired by West Germany, did not favor a heavy handed approach towards Poland and the Soviet Union. The EC restrained its sanctions by only suspending its economic support of Poland and to increasing the import duties on products from the Soviet Union. Nevertheless, the US continued its harder sanctions against Poland and the Soviet Union.

You may want to ask: aren't those days over yet? I am afraid they are not. Do not forget the origin of this American attitude towards Europe. In the years before World War II President Franklin Delano Roosevelt developed an exceptional disgust of the age-old colonialism by European countries, especially of France's hegemony in Indochina. Although the United States through the years had taken some countries by force – thus not without being guilty of colonialism themselves – Fredrik Logevall quotes in his 'Embers of War: The Fall of an Empire and the Making of America's Vietnam' one of Roosevelt's statements in March 1941: *"There has never been, there isn't now, and there never will be, any race of people on earth fit to serve as masters over their fellow men … We believe that any nationality, no matter how small, has the inherent right to its own nationhood."*

This has been one of many ways in which Roosevelt – even prior to Pearl Harbor – expressed an increasing urge in America – having itself liberated from England – to promote the complete independence of the colonies, governed by European countries. Moreover, this has been the basis for the Atlantic Charters of August 1941 with which Roosevelt and Prime Minister Winston Churchill – reluctantly because he did not want to put an end to the British Empire – laid the political foundation for the total independence of the colonies, and for the establishment of the United Nations after the war.

But … now I arrive at the point I wish to make: there was a hidden agenda behind Roosevelt's apparent positioning on the moral high ground. Due to his rushed and heavy handed attempts to free Indochina from France, the French Vichy-government investigated this matter more thoroughly and wrote a report from which Logevall cites: *"The report charged that American businessmen favored decolonisation mostly in order to gain access to raw materials and markets, so as to maximize profits and to maintain production after the war. The basic aim seemed to be 'an open door for merchandise as well as capital'. (…) The open door would favor powerful Americans over European competitors."* To liberalize the post-war world market seemed to have been

The Atlantic Charter

Two months after the London Declaration came the next step to a world organization, the result of a dramatic meeting between President Roosevelt and Prime Minister Churchill.

In August 1941, the Axis was still very much in the ascendant, or so it seemed, and the carefully stage-managed meetings between Hitler and Mussolini, inevitably ending in "perfect accord," sounded grimly foreboding. Germany had flung herself against the USSR but the might of this new ally was yet to be disclosed. And the United States, though giving moral and material succor, was not yet in the war.



The Atlantic Charter formed the basis for the post-war United Nations.

America's motive behind this striving for the colonies' independence.

Maybe we should interpret these events as the origin of America's attitude of 'our interests first', morally supported by the justifiable struggle against colonization. Why would we assume that America will drop this attitude tomorrow? Isn't this history sufficient for the Europeans to take heed?

This is not all that should worry Europe – there is more, much more. Besides this typical US foreign policy – seen through European eyes – within the US and in Asia there is an evolution that should lead to further concerns. The US became economically and politically weaker due to building up an enormous public debt by conducting war after war and by the banking crisis. That debt is primarily in the hands of Asian countries. Eastern Asia itself is affected by international tensions due to conflicts about resources in and under the Chinese Sea, the maritime borders of which are disputed between States such as China, Japan and Korea. This could lead to a situation in which the US turns away from Europe and starts tuning its policies on the Asian countries rather than on Europe.

Let's go back to the Cold War and the following period, to consider influences other than the United States. The process of European integration was between 1945 and 1990 furthered by the Soviet Union's assumed threat. This external factor in favor of federalization seems to have disappeared together with the Soviet Union itself. But is that really true? According to Glucksmann and myself this is not the case. Poetin's Russia does not – as far as I am concerned – set a good example of democracy and political and economic stability. Moreover, the Russian Federation is not afraid of using violence at its borders as appears from the conflicts in the Caucasus and in Georgia.

This Russia is also creating economic worries for Europe: it follows the strategy of divide and rule in the field of energy provision – Germany and Italy agreed separately with Russia about the supply of natural gas, despite the resistance by other EU-Member States. The Russian attitude is also provoking questions throughout Europe in the domain of international trade: according to Euro Commissioner Karel de Gucht Russia does not honor its obligations within the World Trade Organization (WTO), for instance with respect to the European import duties of certain products. Even though Russia is member of the WTO since 2012.

Let's suppose that Russia is no longer a threat to Europe, are there any other threats or challenges? Someone once said: he who controls Africa, controls Europe. This is geopolitically correct: the eastern part of the Mediterranean with its Suez Canal is still important for the supply of resources and products. The same applies to Morocco on the other side of that sea, controlling its entrance and exit. Well, the situation in that part of the world, in Europe's backyard, is unstable. There is continuous tension and conflict – following the 'Arabic spring' – in and behind the eastern Mediterranean. This has been the case for many years: from Algeria to Iraq via Cyprus, Israel and its neighboring countries. This is creating risks for trade routes and the energy supply lines between Asia and

Europe. A thorough analysis of this phenomenon is to be found in Robert Kaplan's 'Monsoon, the Indian Ocean and the World Powers of the Future'. Moreover, tensions, conflicts and poverty motivate people from that region and from the rest of Africa to migrate to Europe, hoping for a better life. Even this international phenomenon, exploited by human traffickers, contributes to tension in Europe and between Europe and its geopolitical neighbors.

Well, this is a picture of Europe's hostile or competing environment, then and now. In my view Europe continues to be confronted with both internal and external risks which are of a social, economic, political and military nature. The actual challenges are – put in key words – stability and security. The disappearance of the Soviet Union may not lead to the naive assumption that these two themes should be moved from the European political agenda. On the contrary. They legitimize their place on that agenda because it is exactly this kind of external threat that has led in many cases to federalization. For instance the United States of America.

In summary, challenging situations exist at Europe's borders which pose possible danger – or maybe have already put at risk – the prosperity, internal stability and security of Europe. Whether or not Europe likes this, the impact has already been felt and will continue.

That is why I am convinced that the old driving force of uniting in the face of external challenges is still relevant: Europe has to stand up for itself because another power will not do so. Right now, at this moment, the welfare state is dying, a statement that I make in accordance with Mario Draghi, chairman of the European Central Bank (ECB). To cope with these challenges, more than ever Europe needs European solidarity. And this factor, solidarity, can only be effectively realized within a Federation. A Federation turns a crisis situation into a win-win situation: merge whatever is needed in terms of means, materials and other instruments in order to strengthen and to save; nothing more and nothing less. Europe has lost sight of this efficiency-oriented goal in 1991-1992. Yes, the European Federation might even become a better 'NATO' with two nuclear countries: France and the United Kingdom.

Why should we wait to draw from that energy source, by expressing the slogan 'Strengthening through Uniting'. With the aim to keep Europe prospering in this multipolar world, which is changing very rapidly. Europe needs to maintain itself. This will not be possible by neglecting the outside world because it wants to have peace and quiet, as has been observed by Glucksmann, but by reforming, thus federalization. Which means: merging on a European level whatever is necessary in the domain of human and other means, the empowerment of Europe by self-reliance.

How? By conducting a policy of its own, economic, social and military, and by doing so showing an affirmative attitude, not as a super power but as a self-conscious power in the world of 2013, which is no longer the world of 1945, let alone the world of 1815. This is also Gluckmann's opinion: *"A civilization does not necessarily lean on only what is communal. Its origin might also be based on an attempt to keep evil outside. (….) If the old European nation states don't*

unite and create one front, then they are doomed. (….) It is in this period of globalization absolutely necessary to perform as one block."

I feel strengthened in this opinion by some recent – more or less similar – observations by two Dutch politicians. On September 3rd, 2012, Euro Commissioner Neelie Kroes stated, in an interview with the General Dutch Press Agency (ANP) the following words: *"No country, not even the Netherlands or Germany, can remain standing against the global power of upcoming economies. Therefore cooperation within Europe is needed."* Furthermore she said: *"In having the European market we have the crown jewels in our hands. The free flow of people and goods within Europe is unique in the world. Other countries are trying to keep up with us in an ever faster pace. The idea of 'we are capable of managing things as separate countries' is over."*



Neelie Kroes, former EU-Commissioner on Competition, now EU-Commissioner on Digital Agenda.

And what should we say about this quote from the Montesquieu Lecture by the outgoing Dutch deputy Minister of Foreign Affairs, Ben Knapen, at the beginning of September 2012: *"We need to strengthen all possible means to defend our values and interests, even our prosperity, and to further them in a world of rapidly evolving powers. In the first half century an 'ever closer union' has been the instrument to achieve the goal of no more mutual wars. Now I am seeing another instrument, namely the need for an 'ever stronger union' to achieve a more contemporary goal: the protection of values and interests."*

To give Europe back its dignity, its self-esteem, it should unite purposefully on that level. I am asking you: will we as Europeans continue to choose the path along 27 and more States, leading to its downfall? Europe's decay has already been noticed worldwide, and demonstrated. For instance by ignoring the European Union and its Member States by non-European delegations – including the BRICST-group during the last environmental and development conference in Rio+20.

Thus Europe has to merge its powers to regain its place on the world stage. We have to choose urgently for a change that will lead Europe towards a promising future. Investing in change requires endeavors. Merging our European powers, now divided and weak. Chance in a European sense: to climb a mountain with a splendid view on the promised land and then descend to its valleys to pick the fruits. Isn't that what we need and thus should want to achieve? Which forces us to gather courage. Investing in order to harvest. The European nations have done so separately in the previous centuries. Why not do this together now?

Klinkers, September 2012

PAPER 10

Paper no. 10 summarizes what Klinkers and Tombeur have attempted to clarify in the previous Papers. Klinkers briefly repeats what a Federation is and why this form of governance is superior to the present intergovernmental European system. This should settle the many misunderstandings – some of which willfully created by Europe-skeptics – regarding the true nature of a federal organization. In view of the assumption that it is no longer necessary to dwell on the differences between confederalism and federalism, Klinkers announces a new range of Papers, fully addressing questions such as: how would it be possible to build a European Federation from the current situation? And what should a Federation look like, both constitutionally and institutionally?



Seneca

FAQ 14: What makes a Federation stronger than any other state system?

The answer to this question will be clear if you look at Federations such as Canada, the United States of America, Brazil, Australia, India, Austria, Switzerland and Germany. These are very strong countries. Within Europe you may look at the difference between federal Germany and centralized France: despite the economic crisis Germany still has economic growth – France not at all. This is not a flaw of President François Hollande, but of the centralized governing system. If you like to know more you should read Paragraph 1.5 of the Annual Report 2012 by The Netherlands Bank. This explains why the federal American system could cope faster and more effectively with the banking and economic crisis. What is more: since 1787 there has been only one interior war in America. How many wars did we have in Europe since 1787? See Papers no. 15-17, 20 and 21.



ALEXANDER HAMILTON

"Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquility, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity."

PAPER 10

Esteemed Tombeur, the previous nine papers should have sufficiently explained the essence of a federal way of organizing. The interested reader will by now have a good understanding of the constituent parts of a Federation. Furthermore we have made it clear that the ideas put forward are not based on our personal opinion. What has been said about federal governance is the prevailing academic opinion, originating from Althusius' writings (Westphalia, 1557).

We have also explained that a Federation is no usurping power. On the contrary. States taking part in a Federation do not vaporize, they do not get lost in a greater whole. They preserve their identity. And that identity gains an added value through the solidarity-oriented nature of a Federation. In a European Federation the Germans stay German, The British stay British, the French stay French and so forth. They do not lose anything. Instead, the solidarity based federal system is adding an extra value to them since that system guarantees taking care of some common interests which cannot be taking care of by individual countries alone.

Thus, this is completely different within the present intergovernmental system. That system demands uniformity throughout all Member States. Within a federation the Member States keep their sovereign singularity, thus their diversity. Decisions by Member States do not collide with those made by the federal body, for the simple reason that there is no political hierarchy, as is the case, for instance, in the decentralized unitary State of the Netherlands: when push comes to shove provinces and municipalities have to abide by decisions made in The Hague. It is precisely this informal and formal hierarchy within the intergovernmental system that forces Member States to a uniformity with which many countries, the United Kingdom first in line, have a lot of difficulty.

Due to the United Kingdom's special relationship with the European Union we have investigated the matter of Texas in the United States. In 1861 that State left the union, together with some other states, the Federation unilaterally, without a special charter's legitimization, bartered at the moment of entering the Federation in 1845. Texas left for fear of an active approach towards ending slavery by President Abraham Lincoln. We have to accept that the concept of federalization at that time was still in an embryonic phase. And that federalization is – as is the case with all our thinking – subject to evolution. Apparently those States could afford to step out of the Federation, just like that. But they paid a high price for this. Today, federalization is a matter of togetherness. Determining this is of great importance. It may be too heavy an obstacle for the United Kingdom: a country that will probably always try to barter an exit-agreement before joining a European Federation. This was already revealed by its absence in Westphalia in 1648. To get this land to become part of a Federation seems to be a mission impossible.

In other words: Confederalism and Federalism are two completely different models of organization. Confederalism can be compared to a marriage: 'It takes two for a marriage; it takes only one for a divorce'. Federalism is a bond than a marriage: each partner, the federal body as well as each member, has to agree with any decision to change the bond, from its establishment until its end, the



Federalization is a matter of togetherness and ….



…. being there for one another.

dissolution. In a Confederation sovereignty lies solely with the constituent parts of the Confederation; in a Federation sovereignty is shared between the whole (the Federation) and the parts (the Member States, or whatever name they may have).

Since the first steps towards European cooperation, after World War II, Europe has never set the fundamental step towards a real and complete Federation. That is why David Marquand is right when stating in his 'The End of the West' that the European Union is caught in a no man's land between federalism and confederalism.

With this we hope to have removed a number of misunderstandings about a European Federation. And let's be honest, many of these misunderstandings were created by French, British and Dutch politicians – not coincidentally all functioning in unitary states. In doing so, they have frightened a lot of European citizens, unjustified but not without a purpose. Of course there have also been politicians whose negative utterances about Europe did not serve the purpose of political gain. They may have voiced their negative views about Europe because of a real concern about its way of operating. But in doing so, they have become victims of an optical illusion. Maybe a metaphor can clarify their misunderstanding.

All living creatures go through four phases of life. Organizations are no different: birth, development, steady state and decay. Due to the fact that – as of the 1990s – the European Union has been subject to an incredible number of alterations, not least by the Treaty of Lisbon, one holds the illusion that the intergovernmental system is still alive and kicking. But after the failed attempt at federalization, in Maastricht in 1992, this system has produced – with a lot of pain – only one baby, the euro currency. And the sole child is being neglected, because it is not fed by its fighting parents. Thereafter the European Union's health has deteriorated and right now, as the system of communal decision-making about communal matters, finds itself in the phase of decay. To all intents and purposes it is dying.

The still perceivable signs of life are misleading, for the simple reason that on a daily basis thousands commute to their European jobs and receive a monthly salary. That is the 'life support system' artificially keeping the system alive. But as a matter of fact, as a vital community the European Union has already expired – this is the optical illusion. Due to the fact that its negative effects are visible and tangible, especially as a result of the inability to solve efficiently the financial-economic crisis, it is legitimate to judge the Union negatively. But one is mistaken by the real source of that legitimate criticism: the basic cause is not the halfhearted decision-making but the expired vitality of the system.

Let's go back to the people who gain party political profit by picturing the European Union as a dangerous monster. Apparently this type of misleading is of all times. It was already mentioned by the authors of The Federalist Papers. In Paper no. 15 Hamilton warns his readers that the path from a Confederation towards a Federation is being made difficult by the many obstacles created by sofists, i.e. the advocates of confederalism. He conveys this warning by accurately summing up the shortcomings of the confederal system. Without any hesitation he states that the country will become an anarchy if the confederal system prevails. This point of view is synonymous with our statement that intergovernmental governance is eating itself from within: the EU-system, driven by national agenda's, is on a life support system and will collapse if it does not change.

For a better understanding of Hamilton's passionate plea it seems appropriate to cite some of his words. He talks about 'intelligent friends of the Union', placing the followers of confederalism in the corner for dummies. He considers confederalism as the final stage of 'national humiliation'. And what should we say about words such as 'constant and unblushing violation', or 'imminent peril for the preservation of our political existence' as the ultimate effects of confederalism?

Those are no minor observations about the dangers that confederalism poses according to Hamilton. Then, he refutes step by step all the confederalists' criticisms of the concept of the federal Constitution. Ending with: *"Here, my countrymen, impelled by every motive that ought to influence an enlightened people, let us make a firm stand for our safety, our tranquility, our dignity, our reputation. Let us at last break the fatal charm which has too long seduced us from the paths of felicity and prosperity."*

At the core of Hamilton's criticism is the fact that in the Confederation the principle of the legislative power is in the hands of the States, not with the citizens forming the States. We have dealt with this basic characteristic earlier: the intergovernmental governance is built top-down; the Heads of States and the Heads of Government are the ones making the decisions within the European Council, often prefabricated by France and Germany. The German philosopher Jürgen Habermas, cited by Rik van Cauwelaert in the weekly Knack, puts it bluntly: *"The political elites push their elite-project through – without batting a eylid – and deprive the European citizen from his input."*

In a federal system, on the other hand, the decision-making power is organized from the bottom-up. This is the fundamental difference. This explains to some extent the unrest and dissatisfaction felt by European citizens with respect to Europe's present system of governance. It is therefore no less than brilliant that the founding fathers of the Federal Constitution of the United States – at the Convention of Philadelphia in 1787 – have provided that concept with a Preambule, starting with the famous words: *"We the people ...."* It was not the participating States, not their Governments or

the Heads of Government, but the people themselves who founded the American Federation. These words has led them to an extreme principle point of view: they refused to lay the draft of the Federal Constitution before the thirteen Confederal States, nor before their respective Governments, but before the people of those States. The citizens and no one else should decide upon accepting or rejecting the Constitution. And they accepted it.

Hopefully this also clarifies that a federal form of governance possesses a completely different form of sovereignty than the one we know from Westphalia 1648. The sovereignty created then was the result of the ending of dozens of wars in Europe. In essence the 1648-concept of sovereignty created a negative equilibrium between States. The boss-in-your-own-house concept was plainly hostile, in the sense that another country should not ever consider attacking you, or interfere with your business: the principles of non-intervention and non-interference. It was sovereignty as an instrument of deterring, of dividing States. A sovereignty that created the protection of the State's territory, the own nation state, and thereafter the protection of trade interests. The peace conferences of Vienna in 1814-1815 and those of Versailles in 1919 – birth certificates of new borders between States – did not change the meaning of that Westphalian – nationalist and protectionist – concept of sovereignty.

Sovereignty within a federal system is exactly the opposite. It is an instrument creating a bond between States. The Member States, aware that their existence and survival are guaranteed within a Federation, have their own sovereign decision-making powers, untouchable by the federal body because there is no hierarchy. They use these decision-making powers to maintain, in solidarity, centripetal, one federal State: sovereignty as an instrument for creating added value. None of these Member States feels the need to articulate the preservation of its sovereignty towards other Member States or towards the federal body in terms of: "Keep off." There is no need to be afraid that another Member State will harm them.

A growing number of States have already recognized the unique power of federalization. It is thus not strange that the United States of America are the strongest country in the world and that Germany is seen as the strongest in Europe. And Brazil in South America.

Would it go too far to predict that federalization will be the most significant characteristic of nation building in the 21st century? Until the birth of the United Nations, immediately following World War II and based on Roosevelt's and Churchill's Atlantic Charter (August 1941), the Westphalian principle of sovereignty was an instrument to keep States separated. Often in vain. Some kept on looking for war. Since the UN-Charter an explosion of intergovernmental governing bodies has arisen, inevitably leading to a loss of national independence and sovereignty. However, this intergovernmental system of governance seems to have a short life span. It looks like a model for a transition period: an in-between model as



THE Atlantic Charter

August 14, 1941

a bridge from the era of sovereign nation States of the Westphalian nature to sovereign nation States of a federal character.

One should realize that there have been several federalizing attempts before and during the expansion of the European Union since the 1950s. The prevailing intergovernmental form of government, however, appeared to contain too many obstacles and pitfalls to get these attempts through successfully. This is typical for intergovernmentalism. Therefore it may well be only a temporary method of governance – a model of transition between the Westphalian sovereignty of the State with its division between nations, and a future, predominantly federal form of sovereignty with centripetal coherence between Member States.

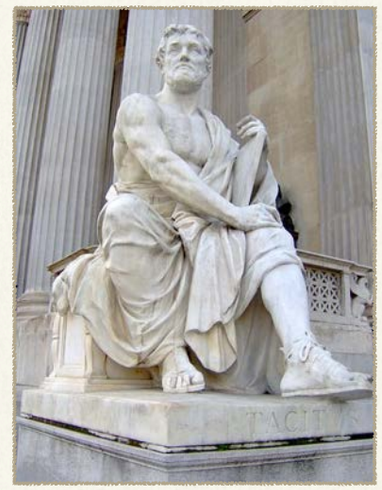
In that perspective the question might be raised: would it go too far to assume or even predict that the first half of the 21st century may be characterized by a series of federalization processes all over the world? When the European Union reaches that status both constitutionally and institutionally, wouldn't this serve as a catalyst for transforming many other intergovernmental governing bodies into federal ones? Look for instance at the hodgepodge of intergovernmental bodies in South America: the Organization of American States (OAS), the Union of South American Nations (UNASUR), the (still limited) single market of South America (MERCOSUR), the Caribbean Community and Common Market (CARICOM). If Europe steps forward and adopts a federal system, thus becoming politically and economically stronger, would it be unthinkable that Brazil would take the lead for the same process in South America? With the effect that Caribbean countries within the ACP-system (the so called African-Caribbean-Pacific-countries, mostly former colonies) will also gain a more mature relationship with the European Union? Or the other way around: since Europe has already been on a life support system for some time, wouldn't it be a realistic assumption that upcoming existing federations outside of Europe – Brazil and India – will serve as a catalyst for the creation of a European Federation?

We shall see. Let's try in the next paper to explain that the intergovernmental governing system of Europe never could (in the past) and never will (in the future) be transformed into a federal one if such an attempt or approach emerges from within the intergovernmental system itself.

Klinkers, September 2012

PAPER 11

Before going further with the nuts and bolts of federalization Klinkers deems it wise to establish why the many attempts to turn the European Union into a Federation have failed thus far. He takes the reader to the multidisciplinary domain of the science of public administration in order to illuminate – on the basis of concepts drawing from cybernetics and system theory – the systemic errors of the intergovernmental system, as a result of which this system is already clinically dead. He also explains why any attempt to create a federal concept stemming from the intergovernmental system is also bound to fail.



Tacitus

FAQ 15: How does a country become member of a Federation?

In two ways: either immediately at the moment of ratifying the Constitution (from that moment on there are no conditions to meet other than to comply with the rules of the Constitution), or one can join at a later stage. In that case the Constitution requires a heavy decision-making procedure. Not only the Citizens and Parliament of the joining country need to agree upon that, also the Citizens and Parliaments of the other member states, as well as the two Houses of the federal Parliament. See Papers no. 5-8, 21 and 24.



LARRY SIEDENTOP

"The EU struggles with a systemic crisis, politically as well as economical. Europe evolves towards bureaucratic forms of governance, on the European level as well as on the national."

I sincerely hope that the soul and the superiority of federal governance has been elaborated sufficiently. Now we are obliged to clarify how the present European Union would ensure its freedom, security and happiness (every citizen's right to pursue his or her own happiness – key words fundamental to the basis of the US Federalist Papers) through a federal form of organizing. The central question becomes as follows: how could federal European governance be established? Followed by: what should this federal governance look like in political/legal (constitutional) terms as well as organizationally (institutionally)?

In order to answer the central question, we should first analyze why all attempts have failed. Luuk van Middelaar describes in great detail – as mentioned before – the reasons for the many failures to federalize. From the angle of the concept of subsidiarity – which will be dealt with in a future Paper – the aforementioned Éva Bóka has also summed up the failures and their backgrounds. Both authors indicate the obstacles to federalization. When looking in more detail at exactly this subject, i.e. when an attempt failed, why and who was responsi-

ble for this failing, one notices that all failures stem from the same source: all attempts to federalize Europe originate from the intergovernmental system itself. They emanate from a system that is weak in itself, ill and dying.

This explains a lot about the causal background of the continuously failing attempts at federalizing the Union. It is impossible that a governing system aimed at European cohesion and cooperation but actually operating on the basis of national interests, thus in reality operating on the basis of division/apartheid, would be able to create power. That is not feasible. And that has been exactly the reason why Hamilton, Madison and Jay turned the 1787 Convention of Philadelphia into the direction of drafting a Federal Constitution rather than adjusting the Confederal Treaty: despite their sometimes conflicting personal opinions, they understood perfectly well that a regular gathering of representatives of States – within the EU these are the European Council and the Ministerial Councils – would not create a cooperative decision-making model, unless there would be an element above them with a specific decision-making mandate of its own, not operating hierarchically top-down, nor competing or colliding with the mandates of the Member States.

If a model of governance, a) is continuously striving to become another, better model, because one observes that it is not performing well enough, and b) time and again fails in those attempts, then sooner or later one should recognize that the system itself is deficient. Which implies that one should stop trying to find a federal model of governance stemming from the intergovernmental system. You will never find it. Because you do not possess the correct navigation instruments for that. The instrumental toolkit that has been used to build and direct the European Union as a Confederal system, is of a different kind than the instrumental toolkit needed to create a Federation and to maintain that form of governance.

As is the case with any system, the intergovernmental system attracts its own people. Who do we see acting as the dominant people on the European stage? Lawyers and political scientists. They manoeuvre the intergovernmental structure and its procedures. Economists also play a role but are more content-oriented, dealing with monetary and financial-economic matters. Not concerning themselves much with subjects of stately design.

I do not oppose the validity of the presence of lawyers and political scientists on that stage. The legal domain is richly variegated, containing many different fields. And due to the fact that law, justice and legitimacy are conditions sine qua non for freedom, security and happiness (just like Clinton Rossiter, editor of the 1961 edition of The Federalist papers already mentioned) lawyers have all the rights to be present on that stage. The same applies to political scientists, although, in my view, to a lesser extent. They do not cover such a rich variety of fields as those in the legal domain. And they tend, in my view, to draw too quickly superficial explanations of political behavior by explaining political decision-making

as merely the exertion of power – to then use that explanation as an excuse when the decision-making does goes wrong. As if this is all there is to holding a political office. Isn't there more, such as knowledge, science, expertise, ratio, conviction, reasoning, advice, good governance and, let's not forget, the rule of law? Notions of that kind of decision-steering aspects are not often to be found in political science. But let me put this aside.



The rule of law means: 'No one stands above the law'.

Who do we not notice on the intergovernmental stage, at least not in a dominant role? Professionals in the science of public administration. Other than lawyers and political scientists they do not deal with a monodiscipline, but rather look at the structure and functioning of an administration from an amalgam of academic disciplines, including constitutional law, political science, management science, communication theory, cybernetics, system theory, science methodology, philosophy, social psychology. I may be wrong but this kind of academics is hardly to be seen in authoritative positions in the intergovernmental house. That is why in the literature explaining the failed attempts to federalize the EU we mainly find legal or power-oriented explanations. No multidisciplinary interpretations of the background of those failures.

Professionals in the science of public administration – especially those who really practice their academic knowledge within the offices of any public administration – look at administrative matters from a different perspective. They analyze the dysfunction of the intergovernmental body primarily with concepts from cybernetics and system theory. The first thing to be done then is to search for systemic errors. These are errors that are so severe that they bring the system to a collapse. They are not reparable. It is even worse: any attempt to repair a systemic error aggravates the defective character of the system. In the beginning there is some relief, but soon it is revealed that the repair has only a short-term effect, after which the misery spreads – accelerated and multiplied. To finally conclude that the system has died. Or, in our case, is clinically dead.

What systemic errors are we talking about? Let me confine myself to some, interwoven defects of the intergovernmental system, looked at from the angle of the science of public administration. The overall dominating systemic error is the fact – it has been mentioned before and The Federalist Papers already pointed at that – that the intergovernmental system is trying to reconcile the irreconcilable. It is trying to find in the structure and procedures of common decision-making a common interest, but while doing so, it is using the instrument of the exchange of national interests of the

participating members. This always produces, by definition, winners and losers, if not only losers. Because they have agreed that the result of their decision-making should be executed uniformly in each Member State, an increasing aversion against this type of decision-making arises in the losing Member States. This aversion works like poison: it settles itself in the vital organs of the national systems, then in the moods and minds of the people, after which its destructive work brings the intergovernmental system itself down.

This poison is accumulating since a Member State does not only loose once, but regularly. This type of decision-making is dominated by power and interests, opportunities and threats, giving and taking. Everybody is allowed to win, once in a while, but should accept losing as well. Threatened, in the background, by 'don't rock the boat because otherwise we all get wet'. That is why the intergovernmental system can never boast the saying that it is more than the sum of the parts. On the contrary. It is not even a marriage – a metaphor used before to indicate the confederal nature of the European Union – that allows a member to step out of the union should always losing no longer be sustainable. Though legally possible – article 50, section 1 of the Treaty of Lisbon allows Member States to leave the Union – this has become too difficult, due to practical reasons.

It is, at the most, a LAT-relation (living apart together) which is reluctantly sustained by many of the partners, since going alone is even more unappealing. Public administrators who approach this matter from the principles of social psychology can explain very well where the mutual distrust, the tricks, the miscommunication and the back-room deals come from. And therefore the increasing aversion of the people of the Member States, often stimulated by Europe-skeptic politicians.

The wish to reconcile the irreconcilable has led to an organizational construction of a system-destructing nature. Four officials possess, within the same system, a mandate of their own to speak on behalf of Europe: the chairman of the European Parliament, the chairman of the European Commission, the chairman of the half-yearly rotating EU and – since the Treaty of Lisbon – the chairman of the European Council. No organization can survive having no less than four chairmen who, each on the basis of their own – legally legitimate – mandate is allowed to speak about the European Union. It is even worse. The Heads of the Governments of France and Germany are the ones who take the actual decisions, though without a legal mandate to do so. Seen from the angle of organization theory we are talking about a 'capital crime': four captains who each on a different part of the same boat are allowed to take decisions, or make comments, about the course the boat should take. In addition there is the question of whether their respective powers correlate correctly with their accountabilities.

On the operational side of the system the dominating systemic error manifests itself in the accumulation of repairing policies and

legislation. Each time they conclude that everybody is unsatisfied with the way in which business is being done, new measures are taken – policy-oriented as well as legislative – to produce a smile on each other's faces. Until the next blow.

To prove again and again the statement by journalist and author Jochen Bittner in his book 'So nicht Europa' (Not this way Europe): the European Union regulates the small things too big and the big things too small, the soft too hard and the hard too soft and she moves at the top too quickly and too slow at the bottom.



Jochen Bittner, opinion writer New York Times: "The way Europe (EU) evolves is completely wrong."

Professor emeritus Larry Siedentop, a British-American historian and philosopher, holds the same opinion; in an interview with Knack at the end of 2011 he said: *"The EU struggles with a systemic crisis, politically as well as economical. Europe evolves towards bureaucratic forms of governance, on the European level as well as on the national."* Though both are right as far as the operating of the intergovernmental system is concerned, they do not go beyond the States and their revolting regions. They do not descend to the street level, the level of the European citizens. These are not customers nor shareholders.

Characteristic of the continued propagation of patching up was the State of the Union Address delivered by the chairman of the European Commission, José Manuel Barroso, on September 12, 2012. Notably on the same day the German Constitutional Court decided that the European Stabilizing Mechanism (ESM) was not contrary to the German Constitution and was allowed to be executed under certain conditions. Barroso called for more integration by creating a 'federation of nation-states'. No super state. But what is a Federation of nation states other than a confederation? Fortunately he was contradicted the same day by Guy Verhofstadt, leader of the Alliance of Liberals and Democrats for Europe (ALDE) in the European Parliament, who stated: *"We do not need a Federation of States, but a Federation of European citizens."* With this observation he referred implicitly to the US Federation, established by the citizens of the thirteen confederal Sates, not by the Governments of those States.

With these words Verhofstadt shows to be a true follower of Jean Monnet who wrote in his memoires: *"Nous ne coalisons pas des Etats, nous unissons les homes (We are not building coalitions of States, we unite the people").*

The authors of The Federalist Papers would turn in their graves if they knew that the European Union has a Parliament that is as close to the European citizens as Mars is to Earth. A representative body unsupported by a direct mandate of the people is, in their eyes, a horror story. The correctness of this assumption can be con-

cluded from the endless debates about the yearly remittance to the Union: a kind of taxation without representation. In 18th century North America this was provocation enough to engage in a war of secession. The reverse, however, is also applicable to Europe: representation without taxation. The European government does not gather financial means itself, resulting in it being subordinate to the Member States.

These kinds of negative effects, as a result of the dominating systemic error which attempts to reconcile the irreconcilable can be explained further through some principles of system theory. In the context of that discipline we have the two concepts, negative and positive feedback. Within the discipline of system theory these concepts are neutral, without any emotional value. However, once applied within the functioning of Governments, which want to achieve goals, these concepts gain a qualifying connotation.

Negative feedback within public administration is, as within any goal-oriented human behavior, the most beautiful thing on earth. For every living creature everywhere. Formulated simply it means that at the moment of assessing a deviation of a charted course (= assessing an error) an analysis plus the elimination of the cause of the error will lead to the correction of the deviation, thus returning to charted course, through which the goal will be achieved. Negative feedback is the universal goal-achievement mechanism: if one sets a goal, starts going into the direction of that goal, detects a deviation of the course and continuously corrects that deviation by eliminating the cause of the deviation, then ultimately the goal will be reached. Thus, 'negative' in negative feedback does not refer to the error, but is rather derived from the Latin 'negare': denying, undoing. In algebra it is indicated by the minus sign. A simple example of this we see when someone tries to ride a bike straight on a one hundred meters white line. That is impossible. He will always veer a bit to the left and then a bit to the right of that line. By continuously correcting the deviations he will eventually reach the goal and the end of the line, unless something unforeseeable happens. That is why governing is always a matter of dealing with uncertainty, in which those governing should only focus on assessing the causes of problems in order to eliminate them. This is the universal principle of any human goal finding. A principle that is also applied in devices like the central heating, the air-conditioning and in cruise missiles.

This system-theoretical concept is balanced in the methodology of science, worded by Karl Popper in the 1930s as follows: *"Trial motivation and error elimination"*, normally shortened to 'trial and error'. This principle is the basis of successful evolution or scientific progress.

But what then is positive feedback? Well, if negative feedback is the most beautiful thing on earth – because it enables people to reach their goals – then positive feedback is the worst thing to encounter. It means that at the moment of assessing an error the reparative measure does not eliminate that error but rather deterio-

rates it: a strengthening of the deviation, further and further veering off the charted course. Not linear but progressively. Thus not in the order of 1, 2, 3, 4, 5 …., but via 2, 4, 8, 16 and so forth. That is why, as I have already mentioned: at first one is relieved, but soon it appears that the repair only has a short-term effect, after which the misery spreads in an accelerated and accumulating way.

Positive feedback becomes visible through the acceleration and accumulation of the error. Here is an example, outside the domain of the European Union. The ice of the North Pole is white. Thus sunlight is reflected. The sunlight does not penetrate the ice and therefore does not warm up the water. But now? Through exogenous causes the ice is melting. Where this occurs the water is black. The sunbeams penetrate and warm the water, which causes more melting ice as well as quicker melting. That is why now, at the end of the Summer of 2012, the volume of the North Pole ice is smaller than ever.

The horror of positive feedback lies in the irreversible. Once in motion it cannot be stopped. Like an avalanche: it begins with a small bit of snow, to accumulate and accelerate, only to come to a halt at the end of the mountain. Nobody can stop that thing half-way the mountain. The same occurs at the melt-down of a nuclear reactor: as soon as that begins, one has to hurry away as quickly and as far as possible.

The statement is now: if one wants to explain why the intergovernmental European governing system is deterioriating, the answer is to be found in the mechanism of positive feedback. At an ever-increasing pace it produces more and more systemic aberrations due to the loss of too much energy in fruitless repairs of previous fruitless repairs. The system finds itself a) in increasing acceleration b) further off the charted course, and therefore looses more and more its ability to react adequately to external threats such as the economic crisis and the banking crisis. Its immune system weakens progressively. This explains why leading European politicians now start to feel that reparative policies and legislation (in the words of David Marquand ‘low politics’) are no longer the right response. Reluctantly, they speak – in the Summer of 2012 – of the necessity to intervene thoroughly in the system. At the time of writing the German magazine Der Spiegel already announced that German Chancellor Angela Merkel is contemplating the design of a completely new EU-treaty.

Here we see the way in which the mechanism of positive feedback works: within three years of signing the Treaty of Lisbon – a treaty that nobody wanted – a new one is being prepared. How many treaties did we get since 1950? We have lost count. It is even worse. In the second half of September 2012 the newspapers report more initiatives: Commission Chairman José Manuel Barroso announces that he will produce proposals, before the 2014 European elections, for a Federation of States. Chairman of the European Council Herman van Rompuy is to produce new ideas in October 2012 regard-

ing a more elaborated Economic and Monetary Union (EMU). The European Commission is working towards a more robust Eurozone. The 'Future of Europe group', eleven Ministers of Foreign Affairs, chaired by the German Minister Guido Westerwelle, presented the European Parliament on 24 September 2012 with a report on the federalization of Europe. All diverse initiatives, but all starting from exactly the same premise: the umpteenth adaptation of the present intergovernmental system.



The Spinelli Group launched 'The Fundamental Law' in October 2013. It is - again - a proposal to revise the Treaty of Lisbon, designed by Andrew Duff, member of the ALDE party in the European Parliament. As explained in Paper 11 our view is that any revision of the Treaty will deteriorate the working of the European Union. The Treaty of Lisbon should be burned, not revised.

Let's go back to the aforementioned lawyers and political scientists. I can be brief: they are part of the problem. The question, however, is if they can also be part of the solution. In essence the accelerating decay of the intergovernmental system can be traced back to the fact that all attempts to change it drastically came from within the system itself. If we were to ask those lawyers and political scientists to build a Federation, it would fail again. The officials at present operating within the system are in the right place, because the system has attracted them. They feel at home. But the federal stage is not their habitat. In a federal system they do not know their way because their personal DNA is intergovernmentally charged.

I understand the possible reproach that I harshly underestimate the will and the ability of intergovernmental officials to establish a Federation. I also accept the criticism that I implicitly seem to state that only professionals in the science of public administration – not contaminated with the poison of intergovernmentalism – would be able to achieve such a performance. The only thing I want to emphasize is that first and for all we have to look in a completely different way if we are to establish a Federation. In that context I pose the question: are the people who organize and run the present Union the right ones to manage this transition?

David Marquand supports the correctness of this question in his book 'The End of the West'. In harsher words than mine he is explaining that the kind of people that started the European cooperation never worked on the level of 'high politics' (dealing as statesmen with common interests), but always stuck on the level of 'low politics'. That is the level of sectorial and subsector policymaking. Strongly technocratically controlled by politicians whose thinking

is filled with agricultural subsidies, regional aid, free trade and harmonization. Thereby exclusively leaning on diplomats, lobbyists and public officials, never on European citizens. That is why he concludes: *"Not surprisingly, the Brussels Commission has attracted technocrats as jam pots attract wasps."* As an inevitable negative effect of 'low politics' in the hands of predominantly technocrats that kind of people always invents new measures to compensate States which lost some of their interests in the process of wheeling and dealing. To be followed, each budgetary year, by discussions about other or readjusted compensation measures.

The urge for European federalization, which became manifest as of 1950, but which has been handled time and again wrongly, should be placed in a historical perspective. From 1648 Westphalen until the establishment of the United Nations following World War II, we lived in the era of sovereign nation states. As of 1945 those approximately 190 nation states were being taken over, on the left and on the right, by the creation of dozens of intergovernmental systems – indicating a second era of up-scaling. Now a third era of up-scaling seems to be emerging: the creation of a handful of federal organizations, together covering the world. In the words of Guy Verhofstadt: 'the birth of a New Age of Empires'. Thus indicating the development that the world is about to divide itself into a dozen regional centers of power, as an obvious and logical finalizing of governmental up-scaling since the previous century. An up-scaling that we have seen growing since the Middle Ages. Whether or not Europe will become a Federation is no longer the question. The question is: who wants and who can take the lead in establishing that Federation?

For those who doubt Verhofstadt's prediction of the coming of a new age with a handful of federations throughout the world, I recommend reading Éva Bóka's article 'Rethinking the role of the federalist ideas in the construction of Europe'. The coming of a peaceful world federation is the nucleus of that paper.

One of Guy Verhofstadt's famous comparisons reads as follows: "If the United States of America would be governed like the European Union it would mean that the 50 Governors of the States would convene regularly in Washington to make decisions for the whole USA. Apart from being ridiculous it would never work. But this is the way the EU is governed: 28 government leaders - driven by their national interests - decide upon all matters of the EU."



Klinkers, September 2012

PAPER 12

A European Federation can never be established if one makes the same systemic error found in the Schuman plan of May 1950: handing over the decision-making power to the States. This will inevitably lead to the conclusion that a Federation can never emerge from the intergovernmental system and should be established completely separately from that system. Moreover, the approach and ambition of this Federation should resemble the way the founding fathers created the federal US constitution, as well as the approach of the Benelux founders in 1944. Some aspects of the Schuman Plan are important too.



Ovidius

FAQ 16: Is it possible for a member state to leave the Federation unilaterally?
No, not unilaterally. Here the same procedure applies as in the case of joining after the Constitution's ratification: everyone needs to agree for a member state to leave the Federation (Paper no. 24). This subject has been the cause of the Civil War, from 1861-1865: about ten states unilaterally left the Federation because they feared that Abraham Lincoln, as soon as he was to take office as the new President, would abolish slavery. He declared war on them, exclusively because of their leaving the Federation. That was a breach of the Constitution, which he wanted to uphold. Not because of slavery. Only in 1863 did he manage to push through Congress a law on the abolishment of slavery.



ROBERT SCHUMAN

.....this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace.

If it is correct to conclude that striving for a federal Europe will fail by definition if an attempt is made to initiate it from the intergovernmental system, then there is only one option: stepping out of that intergovernmental box. Instead, we should follow – without being contaminated with the poison of systemic errors – the course of cooperative organizations that did not go under because of in-built systemic errors.

This is not to say that the European Union is a complete failure. But now, with the necessity of absorbing an external threat such as the present economic crisis, ensuing from the US banking crisis, chances are 50/50 that the Union will survive. The strength of this European partnership cannot be measured through its economic successes of earlier years, but through its ability to cope with severe blows when they arrive, and through the use of the energy that was gained as a result, in order to strengthen its existence. We do not see any of this. Dancing on the feeble intergovernmental cord, time and again the Union produces only fruitless efforts to strengthen the present, moribund system rather than granting it a loving euthanasia and creating a sparkling and vivid federal organization that, like the American one, has a

lifespan of centuries – and like, it should be repeated, the strong German Federation.

During the Convention of Philadelphia in 1787 the authors of The Federalist Papers discovered very quickly that it would be useless to try solving the crisis of that time by tinkering with the confederal treaty. They decided to leave it behind – completely – in order to create something new: a Federation. A home offering shelter, step by step, to the major part of North America. The Federation bought during the 19th century from France, Spain and Russia the rest of the country that is now its western and southern part, or they took it by force.

This calls for an analogy. What do we do with crumbling old apartment buildings that can no longer justify the never-ending repair bills? We tear them down and replace them with contemporary living spaces. As with the European Coal and Steel Community (ECSC), an organization built by the confederal cooperation of six States, it did indeed have a whiff of federalism. However, that whiff has lost its functionality after decades of the system being tinkered with. It cannot offer adequate housing to 27 Member States. There is an urgent need to build a new system.

In building that new system we should learn from best practices, thus creating a European Federation, next to the existence of intergovernmental Europe. Two organizations side by side, for a while; one wrong and weak, one good and strong. 18th century American history teaches us that the members of the intergovernmental system will incrementally accede to the federal system. The intergovernmental system will evaporate as soon as its final Member State has entered the Federation.

This construction resembles Guy Verhofstadt's idea, as stated in several books: he envisages two concentric circles. The inner circle is the political core of the countries of the Eurozone, cooperating as the United States of Europe (USE) on a certain number of policy domains. The outer circle is the Confederation of States called Organization of European States. Even in his vision the confederal circle will eventually disappear, as it is absorbed by the federal one.

It seems complicated to have, for a while, two European systems next to each other, but that is not necessarily the case. Like children play computer games with amazing ease – whereas the older generation gets stuck within seconds – so will the younger generation of politicians and officials easily cope with the complexity of two European governing systems. Especially if the federal construction starts in the same spot where the first attempt to federalize led to taking the wrong exit. By this I mean the following.

Where did the European Community take the wrong exit (at that time the desired federal highway), to wander around for decades – through fertile land that could fill Europe's granaries – at present to arrive on the fringe of the political desert? While in exile in London, the heads of state of Belgium, the Netherlands and Luxembourg established the Benelux. Cautiously begun as a customs union (1948), the Benelux evolved within a few years into an economic partnership without import and export duties and with an overarching body in 1958. The pace and intensity of this coopera-

tion represented a stimulus for six European countries, headed by France and Germany, to broaden their European Coal and Steel Community (established in 1950) through to the Treaty of Rome in 1957. Not just the first years of the Benelux set the trend for structured European cooperation. The birth certificate itself of this larger European project – the 1950 Schuman Plan – should be regarded as a major incentive for a European bond. The idea came from the French businessman and government advisor in economic affairs Jean Monnet, and was pronounced by Robert Schuman, French Minister of Foreign Affairs.



Jean Monnet, designer of the Schuman Plan.



Robert Schuman, French Minister of Foreign Affairs.

The text of this plan is brief and contains two conflicting matters to which I like to draw the reader's attention. Look at the bold and underlined words, compare them and produce a smile by recognizing the original systemic error, the wrong exit.

Schuman Plan, May 9th, 1950:

World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it.

The contribution which an organized and living Europe can bring to civilization is indispensable to the maintenance of peaceful relations. In taking upon herself for more than 20 years the role of champion of a united Europe, France has always had as her essential aim the service of peace. A united Europe was not achieved and we had war.

Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany. Any action taken must in the first place concern these two countries.

With this aim in view, the French Government proposes that action be taken immediately on one limited but decisive point.

*It proposes that Franco-German production of coal and steel as a whole be placed under a common High Authority, within the framework of an organization open to the participation of the other countries of Europe. The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the **federation of Europe**, and will change the destinies of those*

Right goal

regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims.

The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible. The setting up of this powerful productive unit, open to all countries willing to take part and bound ultimately to provide all the member countries with the basic elements of industrial production on the same terms, will lay a true foundation for their economic unification.

This production will be offered to the world as a whole without distinction or exception, with the aim of contributing to raising living standards and to promoting peaceful achievements. With increased resources Europe will be able to pursue the achievement of one of its essential tasks, namely, the development of the African continent. In this way, there will be realised simply and speedily that fusion of interest which is indispensable to the establishment of a common economic system; it may be the leaven from which may grow a wider and deeper community between countries long opposed one another by sanguinary divisions.

By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a ***European federation*** *indispensable to the preservation of peace.*

Right goal

To promote the realization of the objectives defined, the French Government is ready to open negotiations on the following bases.

The task with which this common High Authority will be charged will be that of securing in the shortest possible time the modernization of production and the improvement of its quality; the supply of coal and steel on identical terms to the French and German markets, as well as to the markets of other member countries; the development in common of exports to other countries; the equalization and improvement of the living conditions of workers in these industries.

To achieve these objectives, starting from the very different conditions in which the production of member countries is at present situated, it is proposed that certain transitional measures should be instituted, such as the application of a production and investment plan, the establishment of compensating machinery for equating prices, and the creation of a restructuring fund to facilitate the rationalization of production. The movement of coal and steel between member countries will immediately be freed from all customs duty, and will not be affected by differential transport rates. Conditions will gradually be created which will spontaneously provide for the more rational distribution of production at the highest level of productivity.

Wrong implementation

In contrast to international cartels, which tend to impose restrictive practices on distribution and the exploitation of national markets, and to maintain high profits, the will ensure the fusion of markets and the expansion of production.

The essential principles and undertakings defined above will be the subject of a ***treaty signed between the States*** *and submitted for the ratifi-*

cation of their parliaments. The negotiations required to settle details of applications will be undertaken with the help of an arbitrator appointed by common agreement. He will be entrusted with the task of seeing that the agreements reached conform with the principles laid down, and, in the event of a deadlock, he will decide what solution is to be adopted.

The common High Authority entrusted with the management of the scheme will be composed of independent persons appointed by the governments, giving equal representation. A chairman will be chosen by common agreement between the governments. The Authority's decisions will be enforceable in France, Germany and other member countries. Appropriate measures will be provided for means of appeal against the decisions of the Authority.

A representative of the United Nations will be accredited to the Authority, and will be instructed to make a public report to the United Nations twice yearly, giving an account of the working of the new organization, particularly as concerns the safeguarding of its objectives.

The institution of the High Authority will in no way prejudge the methods of ownership of enterprises. In the exercise of its functions, the common High Authority will take into account the powers conferred upon the International Ruhr Authority and the obligations of all kinds imposed upon Germany, so long as these remain in force.

It has been the explicit goal to create a European Federation. That this has never come about is due to the mistake of leaving the responsibility of building this federation to the Member States and to leave it to the Governments to appoint the personnel for the High Authority, the executive organ of the ECSC, of which Jean Monnet became the first chairman. That is where the search for common interests began. However, from the beginning, driven by national interests. This is the location of the wrong exit.

The historical wrong exit



The Schuman Plan 1950 aimed at a federal Europe but installed actually an intergovernmental governing system.

That it is impossible to start a Federation in this manner was already understood by the authors of The Federalist Papers. That is why they refused to have the federal Constitution established by the States. They chose to found the Federation through the people themselves – through a system of electors, but anyhow built from

the bottom-up. The fact that any legal form of European cooperation has been undertaken by the States from the beginning, therefore by their Governments – later on culminating in a European Council taking all principal decisions, hierarchically pushed downwards in the context of centrally imposed uniformity – has prevented through the years the creation of a Federation. The original intention was correct, but its execution was wrong, from the very start.

If we intend to establish a European Federation – starting small, elaborating it over the years besides the present intergovernmental system – then we have to internalize and follow the atmosphere and passion of the early years of the Benelux, and of the federal ambitions of the Schuman Plan; without granting the governments of the States any decision-making role in this. How could we achieve that?

Let me respond to that question with two sub-questions: what do you need to establish a system such as this and how should we go about it? Needed, initially, is a problem. Well, a problem we have, since we are facing such a huge threat that one may doubt if the Union will survive. And as you, Tombeur, have argued convincingly in Paper no. 9 that this threat not only consists of an economic and a banking crisis, but in essence the important changes in global power relations, in our trade relations and the emergence of new powerful States, it would be wise for Europe to bundle its strengths into a robust system, a Federation. Thus, as far as threats are concerned, our situation at present corresponds completely with the crisis that gave way to the Federal Constitution of America in 1789.

What else do we need? Some people who think that federal cooperation is obvious. This reminds me of the three people pleading in The Federalist Papers, with passion and arguments, for the American federal Constitution. But also of the kind of people who established the Benelux in 1944. Thirdly we need something resembling the Schuman Plan: a vision, unpolished, sober but convincingly aiming at centripetal solidarity. Finally, we need people of several countries who would love to embrace such an approach.

In short, we need a problem, some fearless pioneers, someone writing a vision making people aware and people agreeing with that vision. Thus, once again: no formal endeavor emanating from States, Governments, Heads of States or Government Leaders. They may take part in this project, but not in function of their office and related mandates. Because then we would once again make the same systemic error that is preventing the creation of a real Federation.

Now the question remains: how do we build a Federation on the basis of these ingredients?

Two things should happen at the same time: 1st the recognition by some people that their country is ready for the centripetal desire for more unity without losing its sovereign identity; and 2nd a person like Schuman who is able to articulate this in a vision. History

seems to teach us that we should look for those people – as in 1944 – in Belgium, the Netherlands and Luxembourg: firm people who come together, look at each other and say: *"Shall we do it?"* What was possible in 1944 is also possible now. These people are among us, I do not mention any names. Nor shall I put forward a suggestion for someone who could play Schuman's role and write the short, convincing and centripetal vision. Such a person is undoubtedly amongst us. But let the natural process determine who will stand up to play the historical role that is needed now.

http://www.aco.nato.int/page14612223.aspx

In this manner a fruitful basis might be laid for the people of Belgium, the Netherlands and Luxembourg to agree on a federal organization. A Federation of three countries as a first step towards a complete European Federation. Beginning quietly: *"In der Beschränkung zeigt sich der Meister"*. Limited both constitutionally and institutionally. I will come back to that later. These three countries withdraw individually from the intergovernmental system – thus leaving as Member States the Treaty of Lisbon on the basis of article 50, section 1 – in order to enter the Treaty again in the form of a Federation of three States. Other Member States of the European Union are subsequently able to follow suit.

As stated above, two things must occur. However, if we want to learn as much as possible from historical best practices I must enquire as to whether we need a third element.

Jean Monnet was a visionary go-getter but we should not forget that he was working, during World War II, in the company of Winston Churchill and Franklin Delano Roosevelt, preceded by the US President Woodrow Wilson, founder of the League of Nations. This will have played a role, undoubtedly, in his conceptual thinking of European cooperation. Following World War II Monnet was familiar with the Marshall Plan of 1947, the first attempt to revitalize Europe in such a way that it could act as a countervailing power to the increasing influence of Russia in the western direction. However, the attempt to create this did not go fast enough in the eyes of the Americans. This led Dwight Eisenhower, in 1951 NATO's first chief commander, to state – derived from Bas Kromhout's article 'Hoe de Amerikanen de Europese Unie pushten' ('How the Americans pushed the European Union'): *"There is no real solution for the European problem before the United States of Europe are definitely established."*



Dwight Eisenhower

Due to financial considerations America wanted to withdraw its troops from Europe, but did not dare to do so before a federal Europe, with one European defense force, was established, as a countervailing power against Russia. To push this concept, America forced countries

EUROPE AT THE CROSSROADS

The idea of a federal construction of Europe stretches back many centuries. But it was nationalism and nation state-making which characterised the early stages of modernity, and it was not until the devastating consequences of nationalism became apparent that European federalism was able to inspire significant political forces. The carnage of the First World War, and the break-up of the Habsburg Empire, led directly to Count Richard Coudenhove-Kalergi's Pan- Europa Union of 1923. The growth of an ugly form of economic and political nationalism prompted the veteran French Foreign Minister, and eleven times Prime Minister, Aristide Briand to propose a "United States of Europe" in September 1929. Both initiatives were élitist, in that they failed either to seek or to attract widespread popular support. Nevertheless, with the international crisis of the 1930s and after, European federalism began to attract large numbers of committed adherents.

The late 1930s and early 1940s saw a remarkable development of federalist activity in Britain, culminating in Churchill's historic offer of union with France, on the eve of the latter's capitulation to Germany. Thereafter, federalism declined as an active political force in Britain itself; but the British experience, and British federalist literature, contributed decisively to the resurgence of interest in federalism on the continent. Helmuth von Moltke, the leading figure in the German "Kreisau Circle", was a close personal friend, and much influenced by, Philip Kerr (Lord Lothian) and Lionel Curtis. In Italy, Spinelli was similarly attracted to "the polished, precise and anti-doctrinaire thought of the English federalists ... who proposed to transplant into Europe the great American political experience".

As Walter Lipgens has emphasised, most of the Resistance movements in occupied Europe and in Germany itself came to see federalism as the only true solution to the European crisis. The old

Analysis of the process of European Integration 1946-1954 by The European Union of Federalists. Mark the final section: not Schuman, but Monnet is responsible for taking the wrong exit in 1950 towards intergovernmentalism instead of federalism.

wanting Marshall Aid to become members of the Organization of European Economic Cooperation, which began with the elimination of trade barriers. However, the United States of Europe, with its European defense organization, has not yet been established.

Therefore I put forward the question if we do not need a third element to make the creation of a federal Europe feasible: a new push from the United States of America towards the European Union – no soft diplomacy but conscious pushing, with money to help Europe solve its present crisis: a new 'Marshall Plan'? Or this time a supporting technological plan for the European Union's military power to finally create a federal bond?

Esteemed Tombeur, since we follow the American federalization at the end of the 18th century as a best practice, it seems good to also look at the origin and operating system of the Benelux as a guiding factor. The power of both historical initiatives may function as a foundation for the creation of a European Federation. Guest author Fernand Jadoul will illustrate this in Paper no. 13.

If some want to reproach us in the sense that following the examples of the United States and of the Benelux do not do justice to the European reality of today, we have to refer to them 'Met de kennis van toen. Actuele problemen in het licht van de geschiedenis' ('With the knowledge of earlier times. Actual problems in the light of history'), a book in which Rutger Bregman explains that history is full of valuable lessons.

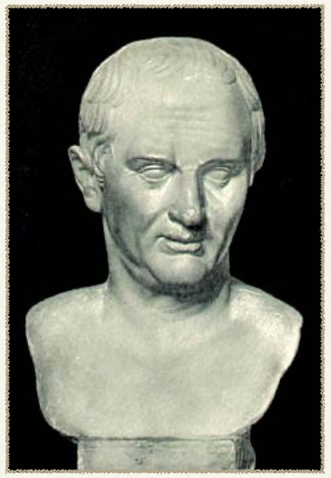


The flag of the Benelux

Jadoul, October 2012

PAPER 13

In line with our intention to present successful examples of political cooperation in the past, guest author Fernand Jadoul outlines how during World War II (thus some years prior to the Schuman Plan) the Benelux was established, what its communal motives were and how this organization served as an example for the creation of a larger European alliance nowadays called the European Union. Although the European Union has caught up with the original goals of the Benelux, the new Benelux Treaty of 2012 firmly supports a further strengthening of European cooperation. Neither the national Constitutions nor European Treaties (including the Treaty of Lisbon) pose an obstacle to the federalization of the Benelux.



Cicero

FAQ 17: What is the part of the federal budget in the GNP?

In the USA this is 24%, in the European Union this is hardly 1%. This is one of the reasons why the EU has so much trouble absorbing the debts of its member states. Again and again debt-free or low-debt member states need to achieve a mutual agreement on the way in which they will help member states with a heavy debt-burden. This is splitting up the EU. See Papers no. 1-5 and 21-22.

FAQ 18: Do taxes of member states remain the same when introducing a federal tax?

No, of course not. When introducing a federal tax, the taxes of member states will be lowered or abolished. Citizens should profit from federalization, not lose from it. It is a constitutional matter and a matter of policy choices which taxes become federal and which remain with the member states and their component parts. See Paper no. 22.



DAVID MARQUAND

"Can Europe recover the élan and political creativity that healed the wounds of the two great European civil wars of the last century and then extended the scope of democratic rule to the former Soviet satellites in East Central Europe? Can it overcome its internal contradictions – between European elites and their people, between democratic promise and technocratic reality? Can it develop institutions with the legitimacy, will, and capacity to enable it to join the United States, China and India as a global power? Or is it doomed to remain an economic giant and a political pygmy – rich, fat, vulnerable, and increasingly irrelevant to the new world that is taking shape beyond its frontiers?"

The seeds for a united Europe have been dormant for centuries. Here and there these seeds did produce a plant; however, the plant always died. Even though Spinelli and Rossi gave a new impulse to European federalization with their 1941 Ventotene Manifest, we must state the fact that Europe is still no Federation. Apparently, we have to await a change in the political climate that will allow the seeds to grow and blossom throughout Europe. Since we do notice some signs of this change, we must assess whether we can draw energy from the past to make a successful jump to the future.

The aforementioned article by ÉvaBóka, 'Rethinking the role of the federalist ideas in the construction of Europe', describes in a nutshell the many federal initiatives and their protagonists. Let us look at some details.

As early as 1713, Abbé de St. Pierre wrote his Projet pour rendre la paix perpétuelle en Europe. In 1814 the French pre-sociologist Count de Saint-Simon designed a model for European cooperation, includ-

ing a European Parliament. Some decades later the French author Victor Hugo introduced the concept of the 'United States of Europe'.

However, only after the two world wars a European movement for unity emerged; to a certain extent thanks to Spinelli and Rossi, but controlled by Monnet and Schuman. Maybe it should rather be referred to as a movement for European cooperation. Since the Treaty of Rome (1957) two main questions have determined the European Union's future: the enlargement and the deepening of the Union. Well, the enlargement of the Union is apparent to all, contrary to expectations: the number of Member States has grown four and a half times within half a century. However, the deepening of the Union – in the sense of further European integration – has not yet led to a success. Its cause has been clearly described in previous Papers: the choice, in the beginning of the 1950s, to cast cooperation into the model of an intergovernmental system did work excellently during the first years of the Community, but gradually became counterproductive. Deepening through integration appeared to be an insidious degradation of the Member States' sovereignty. An erosion of the Nation State as a result of the hierarchical character of the Brussels' type of vertical decision-making, compelling states into uniformity whereas diversity adds color and flavor to living together. Intuitively, resistance against this type of decision-making has grown. Some Member States – headed by the Netherlands – openly worded this with the slogan *"I want my money back"*, a slogan of British origin (see the special section at the end of this Paper).

Let us now continue with presenting reasons for leaving this depraved intergovernmental system of governance behind us as soon as possible.

A further deepening of European cooperation seems necessary, but this should be implemented in a different way: through federalization. The need for integration can be satisfied by organizing the integrating communality – with its own sovereignty – on a level above the Member States, leaving the Members' sovereignty intact. The example that Klinkers has shown in Paper no. 2 regarding the Association of Owners in an apartment building is precisely the model of a federal organization that by definition leaves intact the autonomy of that organization's members, adding only extra value by making it possible to take care – in a way as agreed upon earlier – of the matters of communal interest in that building.

Thus, in a decent Federation the aspect of 'integration' is a matter operating above the 'owners of the apartments' – for their shared interests – without interfering in their own environment. To elaborate this metaphor further: the intergovernmental system compels the owners of the apartments to live together as a commune, where the individual's autonomous freedom disappears. This is the wrong type of 'integration', leading to the vaporization of the

sovereignty of one's own residence. That is why it would be good if European politicians – when pleading for more European 'integration' – would use the word 'political integration' more carefully than they do at present.

Thus it can be useful to learn from the history of the Benelux. The Benelux Union can be used as an excellent example of creating a foundation underneath a federal Europe. For ages the name 'The Low Lands' or the 'Northern and Southern Netherlands' related to that part of Europe that would cover in later years the territory of the Netherlands, Belgium and Luxembourg. On April 19th, 1839 the Great Powers of that time signed a treaty in London to execute what had been on the cards since 1830: the definitive separation between the Netherlands and Belgium, including the independence of Luxembourg. The request made in 1841 by Luxembourg, addressed to the Dutch King (at that time also functioning as the Great Duke of Luxembourg) to sign a treaty with Belgium, supplemented with an economic union with the Netherlands, can be considered as a first step in the direction of what would become the Benelux many years later.

World War I brought Belgium and Luxembourg further together: they established the Belgium-Luxembourg Economic Union (BLEU), which also became a monetary union. Two small countries, but not a small case if one considers that this was happening in the period that the American President Woodrow Wilson was engaged in establishing the League of Nations. In the words of Dirk Rochtus and Ward Kennes: *"This monetary union created already long before the introduction of the euro an intimate feeling of togetherness."*

The economic depression in the 1920s led to broader cooperation: the three countries of the Benelux and three Scandinavian countries signed – through an initiative of the Norwegian Foreign Minister – the first treaty relating to economic cooperation: the Convention of Oslo (1930). The main goal of that Convention was the elimination of trade barriers. Soon after, in 1932, the Benelux countries signed the Lausanne-Ouchy treaty with the same goal. The Oslo-countries were also striving for more political cooperation, but they were unable to stand up against the bigger countries.

I quote here some words from the introduction of Ger van Roon's book: *"The discussion about the Belgian-Dutch proposal of June 1932 to introduce a toll union revived the multilateral Oslo-contacts. The failure of the Economic and Monetary World Conference in 1933 in London pushed the Oslo-countries even closer together. Moreover, Finland was accepted in this bond. (...) Since 1935 and 1936, the years of the invasion of Ethiopia by Italy, and the remilitarization of the Rhineland, the political aspects started to dominate within this Oslo-partnership. Even some bilateral military contacts were established. It would have been a favorable moment to engage in political-military cooperation. Belgium and Sweden had favored from the beginning of the Oslo-cooperation the political aspect of this alliance."*

The development of effective cooperation in North-West Europe has been constant. World War II pushed the three countries of the Benelux even closer together: on October 21st 1943 their Governments signed, during their London exile, a monetary agreement. Barely one year later, on September 5th 1944, while still in exile, they signed the Netherlands-Belgium-Luxembourg customs agreement. In addition to agreements to cooperate in economic affairs where that could be fruitful with respect to their geographical locations. This customs agreement subsequently led to the treaty to install the Benelux Economic Union being signed on February 3rd 1958.

Ger van Roon states in his epilogue: *"The establishing of the Benelux was the result and crowning of thirty years of increased rapprochement between the three countries. The Belgian Government in London had taken the initiative to further cooperation. This was considered as a continuation of the Oslo-cooperation. One of the threads in this book is the process from autonomy to dependency. The history of the Oslo-countries is a warning against exaggerated expectations about the influence of a small country in international affairs. On the other hand this period points at the ability of small countries – especially in mutual cooperation – to execute a more flexible foreign policy, able to respond more quickly to new situations. (...) Because the Oslo-cooperation has been, despite its weaknesses, an indication of post-war integration, this book is also a plea for more international cooperation, especially in times of economic depression."*

The Benelux Union created two elements: a) the coordination of economic, financial and social policy, and b) the acceptance and conducting of a common policy with respect to economic relations with other countries. This economic and financial dimension was gradually supplemented in the areas of transport, physical planning, environment, policing and justice. The success of the Benelux is evident: with respect to economic potential it occupies the fourth position in the European Union, as well as worldwide as far as import and export are concerned.

In the context of the federalization of Europe it is important to look at the three national Constitutions and the treaty-based relationship between the Benelux and the European Union.

With respect to this element the Belgian Constitution states: *"The execution of certain powers can be transferred to international institutions by treaty or agreement"* (article 34). The Dutch Constitution mentions the same: *"Taking into account – if necessary – article 91, section 3, legislative, executive and judicial powers can be transferred by treaty to international organizations"* (article 92). The Luxembourg Constitution states: *"The execution of legislative, executive and judicial powers may temporarily be transferred to international institutions"* (article 49bis). Thus, the Constitutions of the Benelux countries allow them to create a Federation because the transfer of stately powers, in other words sovereignty, is constitutionally possible.

The Treaty of Rome (1957) contained in article 306 the so-called 'enabling clause'. In the following words: *"The provisions of this treaty do not prevent the existence and the completion of the regional unions between Belgium and Luxembourg, as well as between Belgium, Luxembourg and the Netherlands, as far as the goals of these regional unions have not been met with this treaty."* The fact that the countries of the Benelux stood at the cradle of European unification may explain the introduction of this article in the Treaty of Rome.

This text is also found in article 350 of the Treaty of Lisbon (2007/2009). The significance of this is essential for the question as to whether the Treaty of Lisbon may resist federalization of the three Benelux countries.

Article 350

The provisions of the Treaties shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the Treaties.

Due to this article there is no such obstacle. Belgium, Luxembourg and the Netherlands are free to engage in a federal union. Due to the fact that Article 50, section 1 of the Treaty relating to the European Union (which is one of the two treaties within the Treaty of Lisbon), allows Member States to leave the European Union, it will be no problem if Belgium, Luxembourg and the Netherlands leave the intergovernmental system individually, in order to enter that system again as one Federation of three countries – as long as this intergovernmental system is still alive.

Back to the past. The 1958 Benelux Treaty came into force on November 1st 1960, for a period of fifty years. Thus until 2010. During this period some important international, European and economic changes occurred, including the establishment of the European Union, gradually substituting the Benelux' goals with respect to economic and monetary domains. Political cooperation within the Benelux appeared to become weaker too, growing even more difficult due to existing differences in attitude; for instance due to the more 'Atlantic-oriented' Netherlands, as would become manifest in the Iraq affair. Problems and differing opinions with respect to the execution of a part of the Schelde-treaties and the reinstatement of the old railway track Iron-Line did not contribute to intensifying cooperation between Belgium and the Netherlands. Several years ago these controversies resulted in ministerial meetings to be postponed or annulled, or to have ministers represented in those meetings by civil servants.

Nevertheless, this has not led to the disappearance of the Benelux. In good time before the ending of the Benelux-period in 2010, large-scale consultations and preparations on many political levels resulted in a 'Treaty to Revise the Treaty signed on February 13th 1958 to establish the Benelux Economic Union' signed on June 17th

2008 in The Hague. This revised treaty came into force on January 1st 2012. Due to the fact that the working of the Union was broadened to include non-economic matters, the official name became the Benelux Union.

http://www.benelux.int/pdf/pdf_fr/act/20080617_nieuwVerdrag_fr.pdf (French text)

The goal of the new treaty is the deepening and elaboration of cooperation between the three countries in order to a) maintain the Benelux' pioneering role within the European Union and b) expand transboundary cooperation in each domain. It will aim specifically at furthering the economic union's development, at sustainable development and at cooperation with respect to justice and internal affairs.

With the signing of this new treaty the three countries intend to give a new stimulus to their cooperation. This may be concluded when reading the Political Declaration of the three national Governments at the moment of signing the treaty in June 2008. However, this has not yet been executed in the form of a more structural Benelux Political Cooperation. In this Declaration the three Governments pledge among others:

- "Our cooperation … has produced much for our countries and has been a source of inspiration for many other countries."
- "Our organization has been an example to the European Communities."
- "The new treaty opens the way to provide our cooperation with a more dynamic content in a changing international and social context."
- "Our Governments are determined to steer this political process."
- "To adjust the cooperation regularly in order to play a permanent pioneering role within the European Union and to enlarge the effectiveness of transboundary cooperation between our states on all levels."
- In an enlarged European Union of 27 countries it is imperative for the Benelux to speak with one voice on a broad spectrum of matters … and thus … next to traditional meetings before the European Council's meetings – also gathering together at the start of each EU-chairmanship – putting our mark on EU decision-making."
- "The Benelux will fulfill new tasks, develop a new strategy and will receive a new political steering … in order to deliver innovative solutions for all Europeans."

It would not be proper to assume that the three Benelux Governments would restrain themselves to merely expressing these words without having the will and the guts to put the élan and enthusiasm of the Political Declaration into concrete actions. Noblesse oblige. Thus the Benelux should see its catalyst function to-

wards a more cooperative Europe as a challenge and an obligation. To substantiate this I refer to the following.

Some important treaties and agreements have already been signed. For instance the Schengen-agreement and the Senningen-consultation. A more robust Benelux alliance produces an enor-



Belgium, Netherlands and Luxembourg, as Benelux the engine to promote a united Europe.

mous economic potential, especially in cooperation with the German Member State (Land) Nord-Rhine-Westfalen (NRW) and other German Member States. Together, the Benelux and Nord-Rhine-Westfalen cover about 46 million citizens who may exert a large influence in a federal Europe.

Even though the new treaty of the Benelux Union does not state among its goals a cultural rapprochement, the treaty nevertheless mentions that a Common Work Program may include cooperation in several fields, if this should be necessary to realize one of its main goals. Especially within the countries of the Benelux, projects and activities in the field of culture and arts may bring citizens closer – they often understand each other's history, culture and habits better than other Europeans do – and would further European consciousness. Many projects have already been successfully realized, although on a small scale. That is why Rochtus and Kennes asked the right question: *"Is it by definition unthinkable that Letzeburgers, Frisians, Flemish, Dutch, Limburgers, Walons, Picardians, Brabandians, et cetera could embrace a state-bearing construction enabling them to conserve and fertilize their diversity?"* To me this is a rhetorical question.

The Benelux alliance is exclusive. This is recognized in European treaties and is therefore accepted as a unique partnership within the EU, also by other regional cooperation forms such as the Norwegian Union, the Baltic States and the Visegrad countries.

On the level of Europe a Benelux initiative towards its own federalization will likely be received with sympathy and enthusiasm: some countries wait until the first sheep will have crossed the bridge. It would be the first but also decisive step towards a closer, federally organized cooperation with the other European coun-

tries. In all of this, let us not forget the political significance of a federal Benelux: together 53 seats of the 736 in the European Parliament – three more than the Polish or the Spanish representatives (each 50). And together they have 29 votes within the Council of Ministers of the European Union, the same number as the four largest Member States Germany, France, the United Kingdom and Italy.

A final remark. The three Benelux countries have an increasing interest in a further political closing of the ranks in the face of continuing EU expansion. This expansion pushes these three (of the six) founding fathers of the European Community to the margin of the system. The Benelux should not lose its historical value so easily. More than once it has played a pioneering role in the creation of structures and procedures that were accepted and integrated within the European Community. The free flow of people, goods, capital and services, and the creation of one big zone without inner borders (the Schengen Agreement) are important achievements to be attributed to the Benelux. The explicit goal – as stated in the Political Declaration – to keep playing the pioneering role under the flag of the new treaty would really be fulfilled if the Benelux as a whole would embark on a federal Europe. Only then the wish of the Benelux Governments to speak with one voice on the decision-making level of the European Union would be realized.

Its necessity is emphasized by the report 'Citizens in an Interconnected and Polycentric World' (April 2012) by the European Union Institute for Security Studies (EUISS) that, based on the European Strategy and Policy Analysis System (ESPAS), provides a revealing view of the 'Global Trends 2030': by 2030 Asia and Africa determine the political, economic and social developments in the world. America and Europe will be pushed to a secondary place.

In his book 'The End of the West. The Once and Future Europe' David Marquand states the same, albeit in harsher words: *"Can Europe recover the élan and political creativity that healed the wounds of the two great European civil wars of the last century and then extended the scope of democratic rule to the former Soviet satellites in East Central Europe? Can it overcome its internal contradictions – between European elites and their people, between democratic promise and technocratic reality? Can it develop institutions with the legitimacy, will, and capacity to enable it to join the United States, China and India as a global power? Or is it doomed to remain an economic giant and a political pygmy – rich, fat, vulnerable, and increasingly irrelevant to the new world that is taking shape beyond its frontiers?"* In this respect Marquand finds himself in the company of Mark Eyskens, former Prime Minister and former Minister of Foreign Affairs in Belgium, who in 1991 called Europe 'an economic giant, a political dwarf and a military worm'.



Mark Eyskens

Only few will be surprised that Marquand concludes that for good answers to these questions, Europe is compelled to change its governing sys-

tem drastically: from an intergovernmental system to a federal system.

Special Section

To remind ourselves who was the first to use this slogan, and to clarify again to which perfidious procedures the intergovernmental system has led, I quote a short article from the Flemish newspaper De Tijd of November 23rd, 2012.

"Belgians pay through the nose for the Britons

De Tijd, 23/11/2012, by Koen Dedobbeleer

177 Million euro. This lump sum has last year been paid by Belgium to contribute to the British discount at the European budget. In total the United Kingdom assured itself a discount of 3,6 billion euro in 2011, to be paid by the other Member States.

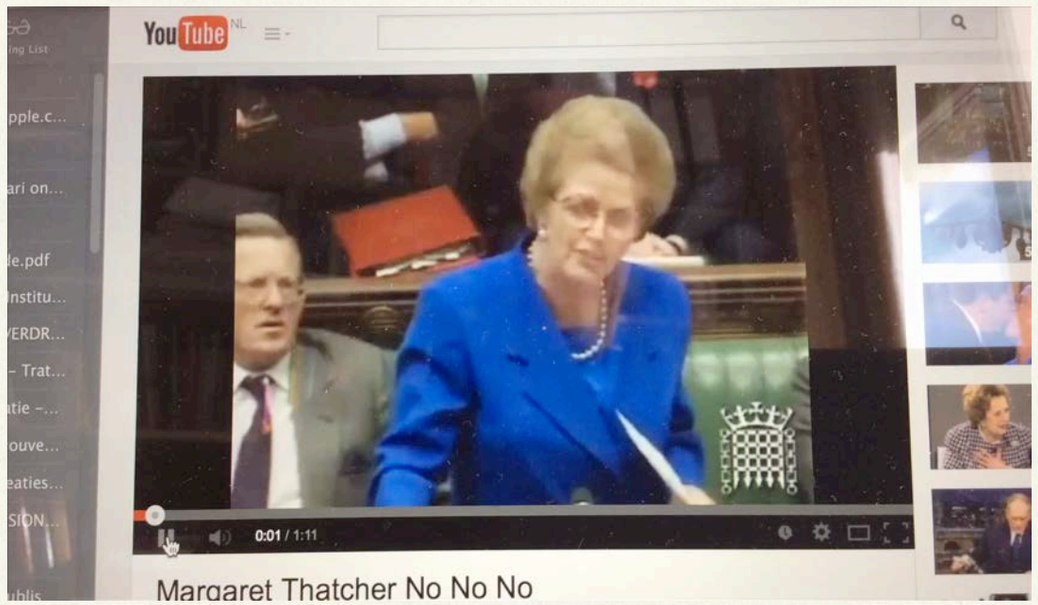
The British Prime Minister Margaret Thatcher pulled this notorious 'rebate'. "I want my money back" she exclaimed in 1984. Thatcher meant that the UK got less European money back than France, that was eagerly tapping into the agricultural subsidies.

In the French city of Fontainebleau Thatcher acquired the green light for a 'juste retour'. Since then the discount is an acquired right, though it creates resentment at each budget duel. Contrary to the Britons, the Netherlands, Sweden, Austria and Germany have to negotiate again and again their discount. And the list of countries that claim a discount is increasing. This time Denmark is also fighting for a correction.

Indeed the British, for who the 'rebate' is a state case, are sitting in a more than comfortable chair. Even if there will not be a multi-year budget they will get their discount. This is estimated for the next year to be approximately 3,8 billion euro.

Besides the 177 million to compensate for the British discount Belgium also paid 24 million for the discount of the Netherlands and Sweden. France paid the major part of the British compensation: 965 million."

Prime Minister Margaret Thatcher's "no, no, no"



Klinkers, October 2012

PAPER 14

With Paper no. 14 the authors begin discussing the constitutional and institutional issues that should be addressed before composing a federal European system. Following their point of departure that the creation and construction of the American Constitution is the best practice for a European Constitution, Klinkers first describes the structure and content of the former. Surprisingly, the American Constitution is a very compact document: it encompasses only seven articles and mainly focuses on a clear definition of the trias politica. In the knowledge that the confederal governing system could not guarantee sufficient unity and that in a federal organization the establishment of a power above the individual States may endanger their newly-won freedom, in 1787 the Americans concentrated on an accurate demarcation of the legislative, executive and judicial powers, so as to prevent one power overruling another. Klinkers mentions that the seven articles of the American Constitution have been supplemented with 27 Amendments. However, all in all this compact Constitution is by far preferable to the 55 plus 358 articles of the (two component treaties of the) Treaty of Lisbon. Those seven articles contain the nucleus of what the people want to be guaranteed and secured, constitutionally and institutionally; there is no need for more.



Niccolò Machiavelli

FAQ 19: Will there be a better balance between income and expense if we would have a federal tax?
Yes. Let's see an example in the field of defense-expenses. The USA spends twice as much on defense as the EU-countries. But they have a more balanced ratio between investments (25%), personnel (50%) and exploitation (25%). Belgium, Italy and Greece spend more than 70% of their budget on personnel. This implies few investments. Moreover, there is a lot of fragmentation. There are more than twenty different combat vehicles in Europe and decisions on defense are taken on the basis of national interests, without looking at surpluses or shortages within the NATO and the EU. The EU can only make operational 70.000 troops out of almost two million European troops. That kind of financial imbalance will disappear within a Federation.
See Papers no. 21 and 22.



JOSE MANUEL BARROSO

"On too many occasions, we have seen a vicious spiral. First, very important decisions for our future are taken at European summits. But then, the next day, we see some of those very same people who took those decisions undermining them. Saying that either they go too far, or that they don't go far enough. And then we get a problem of credibility. A problem of confidence."

PAPER 14

What might a European Federation look like, from a constitutional and institutional point of view? Before I can answer this question I have to solve a linguistic problem.

How should we understand the words 'constitutional' and 'institutional'? 'Constitutional' means that something is based on an agreement which lays the foundation for the operation of an organization. This word stems from the same origin as 'constitutive', meaning 'establishing', or 'setting'. We speak of a constitutive judgment when a judge establishes a legal status. If that basic act concerns a State we call it a Constitution. 'Institutional' refers to the organizational content of that Constitution. Together, 'constitutional and institutional', mean only one thing: the organizational order of a State.

Here we are dealing with a so-called *hen-dia-dys*, a linguistic phenomenon from the ancient Greek, using two words to indicate one matter. Literally it is one (hen) through (dia) two (dys). We also see this phenomenon in the English language, for example 'he came despite the

rain and weather'; or to look 'with eyes and envy'. Thus, a figure of speech in which two nouns joined by and are used in place of one noun.

The concept of 'constitutional and institutional' is used to refer to the legitimate basic organization of a State or of any other construction, for instance the Benelux or Europe.

Esteemed Tombeur, in previous Papers we have tried to explain that it would be wise to follow the best practice of 1787-1789 North America, although you have criticized firmly, in Paper no. 9, the often detached and opportunistic behavior of the United States with regard to Europe. However, this does not change the fact that America has served, both constitutionally and institutionally, as a model for the stately composition of many other countries in the world. We would throw out the baby with the bath water if we – due to America's pursuit of its own economic and military interests – would negate or minimalize its political wisdom at the end of the 18th century.

The way in which some leading figures at the Convention of Philadelphia understood that tinkering with the Confederation would be useless, therefore deciding to design a Federal Constitution, has led us to the statement – as argued in our Papers 10, 11 and 12 – that again and again repairing the shortcomings of the European intergovernmental system is, and always will be, useless. A Federation will never emerge from the repeated reparations, changes or adaptations of that Treaty. One cannot make a silk purse out of a sow's ear.

Although the State of the Union of September 12th, 2012, by chairman of the European Commission Barroso is sympathetic, he finds it necessary to adapt, once again, the present treaties in order to compose a renewed European Union in the sense of a 'Federation of States'. It is hard to understand why he keeps focusing on what is essentially a stalemate. Barroso does not see that the misery that he correctly criticizes is caused, again and again, by the intergovernmental system itself; and never can be solved by alterations within that system. Take this quote from the 'State of the Union' 2012: *"On too many occasions, we have seen a vicious spiral. First, very important decisions for our future are taken at European summits. But then, the next day, we see some of those very same people who took those decisions undermining them. Saying that either they go too far, or that they don't go far enough. And then we get a problem of credibility. A problem of confidence."*

The vicious spiral he is talking about is the typical phenomenon of the positive feedback mechanism that I explained earlier in Paper 11. The fact that government leaders undermine their decisions immediately after they were taken, is typical for the intergovernmental system, that always creates losers: they try to compensate their loss by repudiating their own decisions. If Barroso immediately after this complaint states that questions with respect to the future

cannot be answered with tools of the past, he uses exactly the instrument from the past that is the prime cause of his problems, namely by stating *"more unity demands more integration"*. On the contrary.

As mentioned in earlier Papers: integration is a sympathetic word, but one should know when and where to use it. More integration within an intergovernmental system – how often adapted or changed – produces more centrally imposed uniformity which is vaporizing nation states. And that is exactly why national politicians and citizens feel that something is wrong. The proper need is allocating some sovereign powers to a governing body above the States while those States keep their own sovereign powers. Not hierarchically organized, no top down decision-making, but a complex of sovereign powers for a federal body and for the States as well.

In a Federation 'more integration' takes place above the member states, on the level of the federal body, comprised in the so called Kompetenz Katalog, the limitative set of powers which is entrusted to the federal body. So, more integration does not mean at all harmonization of states to make them look alike. All states remain as they are. Thinking that 'integration' means 'harmonization of states, losing their sovereignty and identity', is one of the biggest mistakes by anti-federalists.

Coming to this point, I would like to refer to a Dutch television broadcast on October 15th, 2012. A journalist was talking to Ben Bot (former Minister of Foreign Affairs and in Maastricht 1992 Secretary General of that ministry), Frits Bolkestein (former Euro Commissioner) and Maarten van Rossem (emeritus Professor of American Studies). It concerned the question as to whether the Netherlands should cooperate in federalizing Europe. Well, the journalist and the first two political figures mentioned above showed a bewildering absence of knowledge about the essentials of a federal system. They used 'Federation' and 'Super State' as synonyms.

The journalist posed only one relevant question, luckily enough to Van Rossem: *"What will we lose if Europe becomes a Federation?"* Van Rossem gave the perfect answer: *"Nothing. We will only get something extra."*

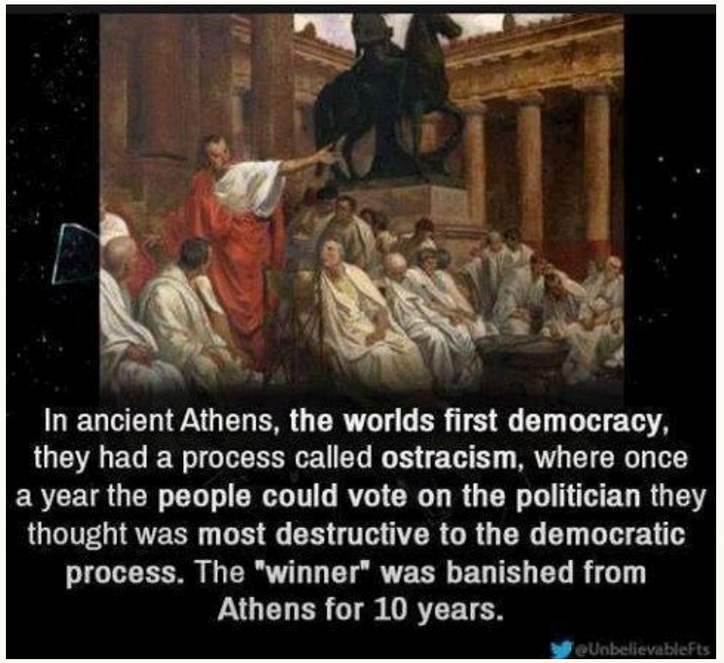
That brings me back to the example that I have used in Paper no. 2, to explain the difference between intergovernmentalism and federalism. Namely by referring to what is known in the Netherlands as the Association of Owners of apartment buildings. Living in such buildings resembles a federal organization: within your apartment you are free to do whatever you like. You decide yourself how you derive your income and how you spend your money. Nobody above you has the power to decide how you should live. No one can take your money. But you know that living in that apartment requires attention to matters that you cannot take care of yourself. Those are matters of common concern: the maintenance of the roof and the foundation, the elevators and the stairway. To take care of that you pay a monthly sum into an association (elected by the owners) that takes care of these common interests.

Thus, within such an association you will not lose anything, but instead you gain an extra: the knowledge that you do not need to worry about these essential matters as they are efficiently managed.

Even a Brit, and not someone to ignore, understood this: the sociologist Anthony Giddens, who circa ten years ago served as advisor to Prime Minister Tony Blair. In his book 'Europe in the Global Age' he states that the European Union, as of the beginning, has achieved more than individual countries would have achieved by themselves. Let me quote from an interview with Giddens by Knack in 2007: *"Take for instance the consultation within an institute such as the World Trade Organization. Because the Union as a whole carries more weight, it is able to achieve more for its citizens than the Member States individually. In the same manner as an organization it can do more against, for instance, the risks of climate change, terrorism and international crime. Contrary to what many, especially new Member States think, in the end shared sovereignty leads to more sovereignty. (…) Present-day intergovernmental Europe has too many restrictions. Government leaders always give way to national interests. (…) If the rules remain as they are, the Union has no future. The change of the upmost necessity relates to the way of decision-making. Due to the manner in which matters are organized now minorities can block a decision forever."* Could the added value of a separate federal governing layer for interests on a wider scale than national interests be better phrased?

Thus the European Federation should be designed – just as the 18th century North American Federation – independently of and besides the existing intergovernmental system.

If we want to use America's process of federalization at the end of the 18th century as the best practice, we have to take the American Constitution (as the outcome of that process) as a benchmark for composing the constitutional and institutional aspects of a European Federation – naturally adapted to today's insights. Perhaps it is superfluous to mention that I do not intend to refer to or draw from the Treaty of Lisbon in any way. That political-legal monster can never guarantee an authoritative constitutional and institutional foundation for European cooperation. It contains far too many articles, all signs of convulsive attempts at keeping each and everyone on board. And hence utterly vulnerable to the saying: *"The more rules, the more fouls."*



The worst aspect of the Treaty of Lisbon is visible in the dozens of protocols and exceptions made towards the end. Any first-year law student learns that law making – by definition – should be gen-

erally binding. Legislation which, following the generally binding articles, formulates arrays of exceptions is the worst imaginable way of law making. This explains why the intergovernmental system does not work, and why it provokes so much criticism. People who have to live in a house with a foundation constructed by non-professional builders rebel as a natural reaction when they experience cracked walls, doors and windows that do not close, a leaking roof and faulty electricity and water supplies.

Well, enough said about the deficiencies of the intergovernmental system. Time for more constructive texts. Before I design a federal European Constitution together with you, colleague Herbert Tombeur, I would like to elaborate on the primary characteristics of the American Constitution.

The draft was designed in 1787 by the Convention of Philadelphia, coming into force on March 4th, 1789. The importance Americans placed on their Constitution was strikingly worded by Eric Janse de Jonge in the opening sentences of his book 'Amerikaans Staatsrecht' (American State Law): *"The first question that Americans pose when confronted with a legal question of a stately nature is: what would the founding fathers of the Constitution have thought about this?"* More than in any other country in the world the American Constitution appears to be a document that keeps people together.

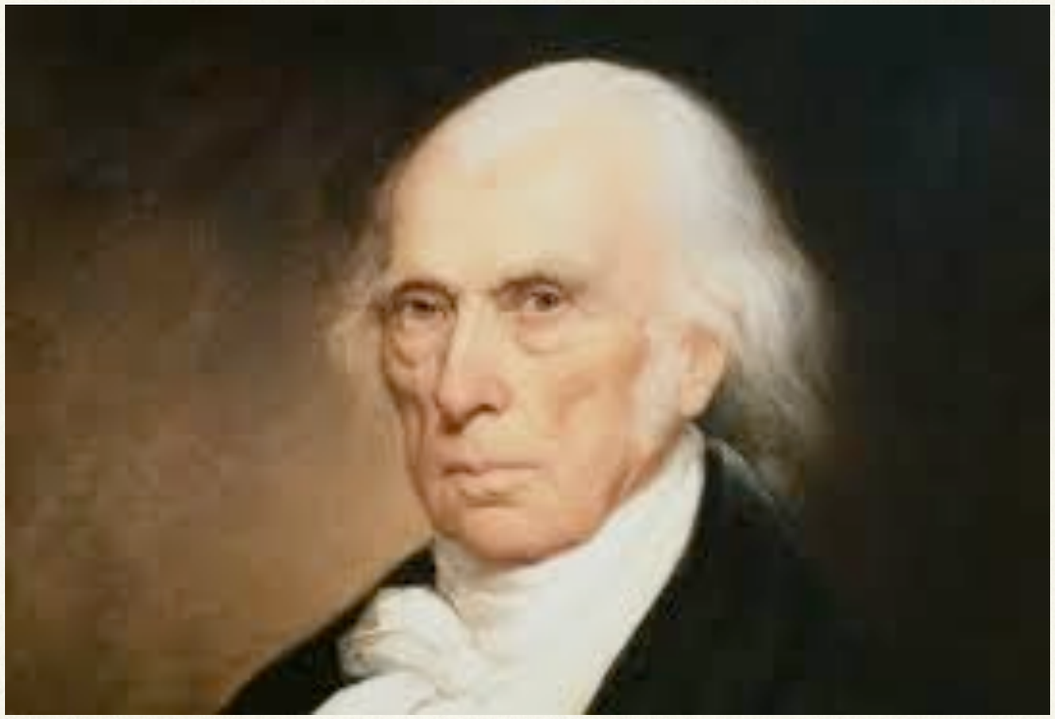
The most striking aspect of the American Constitution is its compact nature. It contains only seven articles. Over centuries they have been sufficient to keep fifty States together. Some articles contain many sections. Moreover, over the years 27 Amendments have been added. However, all in all the Constitution encompasses only a very limited amount of pages.

Let us compare this with the two sub-treaties of the Treaty of Lisbon: 55 plus 358 articles to accommodate 27 Member States. But that is not all. Behind the Treaty we find – as mentioned before – no less than 37 elaborated protocols specifying the working of the articles of the Treaty, or formulating exceptions to the rules for certain countries. These are followed by 65 Declarations in which Member States formulate which article is, or is not, applicable to a specific country. Everyone who enjoyed a decent law study knows that the legal status of such a Treaty is nil.

The American Constitution only formulates the principle of federalism and the trias politica. Through Amendments following soon after 1789 a **Bill of Rights** (1791) was adopted. Striking is the emphasis on federalism and the trias politica. This was all they needed as a foundation for the development of the mightiest country in the world.

Within the trias politica the American Constitution has built an utterly ingenious system of checks and balances; an art of stately bal-

ancing of the highest quality. It is the expression of their hard-won freedom: no person or institute would ever again rule over everyone. The checks and balances are an ingenious elaboration of the rule of law: nobody stands above it.



James Madison (Federalist no. 47): "The accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."

Added by Alexander Hamilton (Federalist no. 78): "For I agree that there is no liberty if the power of judging be not separated from the legislative and executive powers".

The Constitution consists of two primary balances. Firstly, the vertical division of powers between the federal body (= the sovereign body preserving the unity of the country) and the power of the Member States (= each State's sovereign power, preserving diversity within the country). That is the federal system's basis: sovereignty for both parts (the federal and the state parts) without a hierarchy. Thus a sharing of sovereignty by the States and the Federation. Secondly, there is a horizontal division of powers, usually called the trias politica: the legislative, executive and judicial powers operate separately in their own territory and none of these are allowed to impede the work of any of the other two.

However, within these primary balances we find many more checks and balances. In practice the trias politica cannot be carried out rigidly. Often, the three powers have to cooperate, which is the case in any country. To prevent one power overruling the others, extra balances have been created.

To give some examples, with respect to the federal system: the Constitution can be amended but only if the federal body and the governments of the Member States agree. With respect to the trias politica: the President has the power to appoint Ministers and Ambassadors, but he needs the advice and consent of the Senate. With respect to legislation: the President can veto draft-legislation by the Houses of Congress but the Houses are able to overrule that veto by a two-third majority. There are more examples, but I confine my-

self to these. The essence is that the American Constitution blocks any possibility of hierarchical excesses.

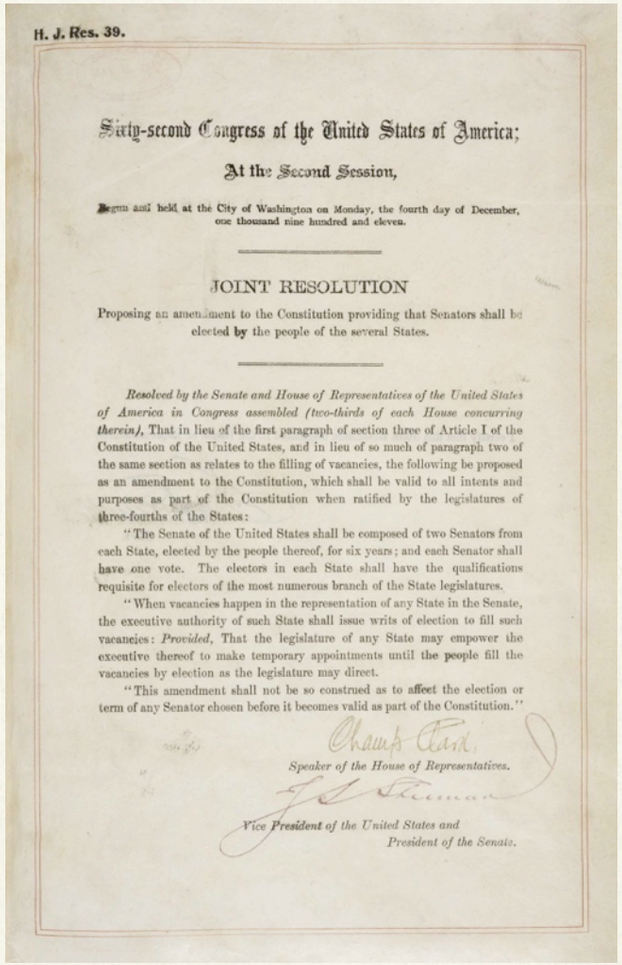
To curb the legislative and the executive powers Alexander Hamilton states in Paper no. 78: *"There is no liberty if the power of judging be not separated from the legislative and executive powers."* In order to prevent the judge from always being granted the last word, however, the legislature will counter undesired judicial judgments with new rules that restore the balance between the two powers.

The founding fathers of the federal Constitution were not only driven to create this ingenious system of checks and balances to avoid losing their hard-won liberty, but also in the hope and expectation that precisely this limited constitutional and institutional system would produce prosperity and welfare. Thus, next to the defense-oriented agenda of creating an obstacle against a possible new supremacy they also had a positive driving force: a Constitution which self-evidently would create political, social and economic progress. The federalists considered this compact Constitution the best instrument for the preservation of their hard-won independence on the one hand and the growth of national strength and progress on the other. History proves them right. A federal European Constitution, based on the American model, may realize the same progress.

Thus far the main characteristics of the American Constitution. Now I would like to give some substantive observations. Articles I, II and III describe the three powers: the legislative, executive and judicial powers. Articles IV-VII deal with the basic elements of federalism.

In ten sections Article I deals with the powers of Congress, consisting of two Chambers: the House of Representatives and the Senate. The House of Representatives guarantees the rights and interests of the people, the citizens. The Senate represents the interests of the Member States. This is an intelligent combination of stately thinking from the bottom up (thus, thinking from the perspective of the citizens) while at the same time guaranteeing the States' sovereignty (thus thinking from the perspective of the separate States).

However, at this point I have to make a comment. The original text of the American Constitution stated that the Senate would be appointed by the legislatures of the individual States. In 1913 Amendment 17 stated that two Senators per State would be elected by the people of the State. I wonder if this is not a breach of the original classical federal system. An impairment of the aforementioned vertical division of powers, one of its characteristics being – as we know – the protection of the States' sovereignty. The House of Representatives, elected by the people, represents the interest of the federal body. The Senate, to be appointed by State legislatures, represents the interests of the States. That is one of the checks and balances that makes the American system so ingenious. By introducing the Senate elected through the people in 1913 a lot of power (or even too much power?) has shifted progressively from the States



H. J. Res. 39.

Sixty-second Congress of the United States of America;

At the Second Session,

Begun and held at the City of Washington on Monday, the fourth day of December, one thousand nine hundred and eleven.

JOINT RESOLUTION

Proposing an amendment to the Constitution providing that Senators shall be elected by the people of the several States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That in lieu of the first paragraph of section three of Article I of the Constitution of the United States, and in lieu of so much of paragraph two of the same section as relates to the filling of vacancies, the following be proposed as an amendment to the Constitution, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the States:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

"When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: *Provided,* That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

"This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution."

Champ Clark,
Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

The 17th Amendment to the Federal US Constitution.

towards the federal body. Anno 2012-2013 it appears that this process has increasingly led to question marks regarding the correct balance of power between the federal body and the States. It would not surprise me if they would come up with an Amendment to repeal Amendment 17, in order to restore the original 1787 text.

Let's return to the Federal Constitution. Article I explains the way in which both Houses of Congress are elected. The Representatives (435) represent the people and are elected every two years. The size of the State's population determines the quantity of the representatives per State. This House chooses its own chairperson and officials. The Senate (100) – two from each State, regardless of their size – represents the States (here I repeat my observation that they are elected by the State's people since Amendment 17 of 1913). They occupy a seat for six years. The Vice President is qualitate qua chairperson of the Senate. If the President is on trial due to severe misdemeanors the Supreme Court's chairperson will chair the Senate. Both Houses determine by themselves the way in which their elections take place. The President has no power to dissolve Congress.

Both Houses are entitled to make laws. However, making federal fiscal laws is the prerogative of the House of Representatives. All laws need the consent of both Houses. The executive government does not design laws; it has the duty to execute the laws of the Houses. That's why members of the President's Cabinet do not appear in Congress. Thus, all laws are products on the initiative of members of Parliament.

The majority of European countries do not have a presidential system, but a so-called parliamentary democracy. This means that parliament is the boss of the executive power, being legitimized to hold responsible a prime minister and members of his cabinet for what they do. This implies the power to send them away if they no longer possess parliamentary trust. Parliamentary democracy does not exist in a presidential system like the United States. Congress and the President are elected by the people, so they are accountable to the people.

This explains the large system of parliamentary committees and the magnitude of personnel in both Houses. It also explains the elaborated lobby system from the part of the executive body to convince members of both Houses to initiate certain laws. The President and his Ministers do not sit down, waiting for draft laws to arrive, but operate actively behind the curtains of the Houses to stimulate the Houses to initiate laws.

Thus, each draft law comes from one of the Houses and is sent to the President. It may be signed, or sent back with an argued veto. In that case the House where it originated can rethink the draft. If that House, and also the other House, accepts the draft with a two third majority, the law will pass. I leave details regarding this procedure aside, referring to the aforementioned book by Eric Janse de Jonge on American State Law.

The powers of Congress are related to matters of national interest. For instance the national currency, the federal fiscal system, commercial relations with other countries, foreign affairs and defense. There are more, limitative enumerated, matters. This limitative enumeration is a typical characteristic of the federal system: Member States are allowed to do anything that is not explicitly granted to the federal body. In a detailed way it is settled that the federal body is not allowed to interfere in subjects belonging to the complex of State powers. See here the protection of the State's sovereignty. Vice versa, it is also determined that the States are not allowed to interfere with the federal body, unless given permission by Congress.

Here appears one of the primary differences between intergovernmentalism and federalism: no hierarchy between the top and the bottom; no (undue) influence by the States in federal affairs; plus sovereign legislative powers for the federal body as well as for the component parts of the Federation, the States. Thus no external interference by States on the federal level, nor any external interference by the Federal level in the State level. This is precisely the point that refutes popular misconceptions, as if a Federal State were a Super State destroying and absorbing the Member States' sovereignty. Quod non. This is the more remarkable since the European intergovernmental system increasingly grants more power to national parliaments in order to influence the decision-making process in Brussels, for instance with regard to the Economic and Monetary Union. This only amounts to piling up conflict upon conflict. In a federal system powers are kept separate.

Article II covers the complex powers of the executive system under the leadership of the federal President. It formulates, among others, his election, the supreme command of the defense, the appointment of ambassadors, officials and the judges of the Supreme Court. This Article is also the basis for the State of the Union, the yearly declaration by the President in Congress. In addition we find in this Article the famous impeachment clause, the possibility to send a President or Vice President away on the charge of severe

misdemeanors ('Treason, Bribery or other high Crimes and Misdemeanors'). In 1974 – due to the Watergate affair – this led to the abdication of President Richard Nixon. Article II also contains the sentence with which the President accepts his office 'I do solemnly swear …'

Thus, as is the case with the powers of Congress, Presidential powers are also limitative enumerated. This does not alter the fact that over the years the legislature, as well as the executive power, have acquired so-called implied powers. However, these cannot overrule the powers as explicitly formulated in the Constitution.

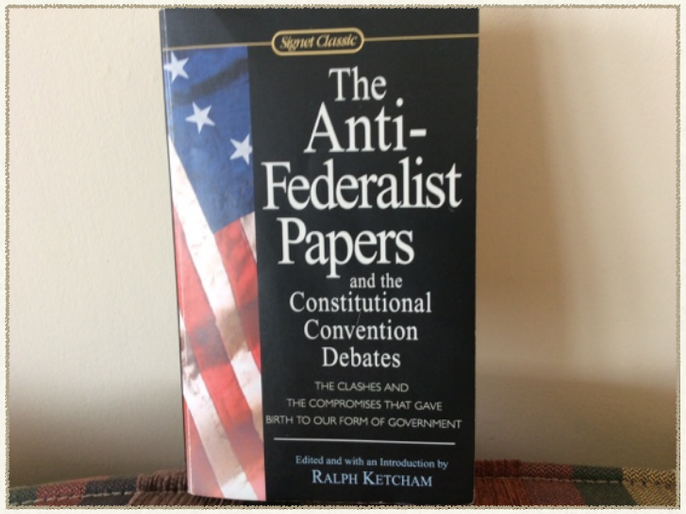
An example of those implied powers are the so-called Presidential Executive Orders. Although there is, strictly speaking, no legal basis for such orders, the President can give order to officials within the executive branch to act as he deems appropriate within the context of this law. Those orders have the power of a federal law because they are supposed to emerge from the law in question. Within European legal systems we would call them discretionary powers; even though, also in this domain, the principle of checks and balances plays a role. If Congress does not agree with a Presidential Executive Order it can try to remove it by designing a draft law. Then the President may veto that draft. Congress may respond to that by adopting the law with a two third majority. Even the Supreme Court is entitled to declare a Presidential Executive Order unconstitutional. Thus, on the one hand optimizing the effectiveness of the executive branch, while on the other hand sufficiently guaranteeing the prevention of an arbitrary use of discretionary powers.

Article III rules that the federal Supreme Court possesses the ultimate judicial power. Its members are appointed for life, thus they are not removable. This guarantees their independent judgment. It is the President who decides upon their appointment, after the advice and consent of the Senate. Next to the Supreme Court the so-called federal inferior courts exist, dealing with conflicts regarding federal laws. An important aspect is the judge's power to review laws and treaties against the Constitution and constitutionally agreed treaties: the judicial review. The Supreme Court is the one and only institution to safeguard the Constitution. This Article is also the basis for trial by jury. We do not have this in the Netherlands. In Belgium it exists in the form of the Courts of Assisen in cases of capital crimes.

Article IV covers matters within and between States, including the relation between the States and the federal body. Furthermore it deals with procedures for privileges and immunities for citizens of States, rules with respect to the extradition of criminals between States, the admittance of other States into the Federation with the observation that it is forbidden to create a new State within an existing State, and the guarantee that each State is ruled by 'a Republican form of Government'.

Earlier I have explained that the 1789 word 'republican' meant 'representative democracy' as opposed to 'direct democracy' or 'popular democracy' in the strictest sense of the word: 'everybody is entitled to co-decide upon everything'. Each of the thirteen Confederal States designed after their independence from England in 1776 their own state form, only to get hopelessly stuck in endless debates about democracy – varying from continuing the constitutional monarchy that they knew from England to popular sovereignty with each vote being co-decisive. This subject was one of the reasons to organize, in 1787, the Convention of Philadelphia. At that occasion the concept of 'democracy' acquired the character of 'representative democracy' within a Federal Constitution. From the annals of the Convention Ralph Ketcham draws the following sentences in his 'The Anti-Federalist Papers and the Constitutional Convention Debates': *"Equally discredited was 'mere democracy' which still meant, as Aristotle had taught, rule by the passionate, ignorant, demagogue-dominated 'voice of the people'. This was sure to produce first injustice, then anarchy, and finally tiranny."* Evidently, this interpretation of democracy was discarded.

Article V deals with Amendments. Both Houses, as well as the States, can present Amendments to the Constitution. However, it requires consent between the federal body and the stately powers for an Amendment to be passed. This is one of the ingeniously built-in checks and balances of the American Constitution.



The catchy title is misleading in the sense that it suggests that next to 'The Federalist Papers' a separate comprehensive anti-federalist document would exist. Which is not the case. Ralph Ketcham's book is an exhaustive historical overview of the most important debates between 1776 and 1791 about the pro's and con's on federalism versus confederalism. As the subtitle says: "The clashes and the compromises that gave birth to our form of government."

Article VI states that judges of each State (thus not the federal judges) are tied to the Constitution, the federal laws and all constitutionally agreed treaties, even if these treaties do not match the laws of that State. This is the supremacy clause, being the prime elaboration of the rule of law. Each public functionary, including officials of the executive and judiciary, has to make an oath or a vow. Even though, without the requirement of an investigation into someone's religious beliefs to be able to get an appointment in a public office.

Finally, Article VII deals with the provision that the Constitution will come into force upon ratification of the draft Constitution by

nine of the thirteen participating States. This majority was achieved in 1789. Following this, the remaining four States entered as well; the last State in 1790. This article stands out due to the fact that the concept of federalization at that time did not yet cover the idea of 'all together at the same time'. There was room for a 'decision by majority' rather than the requirement of complete consensus by all participating thirteen States.



Well, this is the American Constitution in a nutshell. The seven Articles have been supplemented with 27 Amendments. The first ten Amendments cover fundamental rights (Bill of Rights, 1791), issues that Europeans have included in Constitutions and Treaties.

The Constitution applies to all citizens of a State. This document is a federal asset. In addition, States are able to make their own laws as part of their sovereignty. These laws do not need to be synchronized. A well-known example is the death penalty. Some States carry this, others do not. Perhaps unnecessarily I repeat: all States keep their own parliament, government, courts, police, fiscal system, educational system et cetera. Their Governor is elected by the citizens. Who dares to state that within a federation the Member States lose their sovereignty? Or that this evaporates and absorbs the nation state? Nothing could be further from the truth.

I would like to emphasize that care is needed when using the term 'Nation State'. I categorically reject the manner in which Thierry Baudet praises the Nation State. Keep in mind the birth certificate of the European Nation States: the Westphalen Treaty (1648). Sovereignty, as was then granted to the European States, was a mutually excluding sovereignty, primarily aimed at saving the interests of one's own country. A source of repeated perfidious excesses. No one has formulated this better than Altiero Spinelli in one of the first sections of the 1941 Ventotene Manifest, the birth certificate of modern European Federalism: *"Absolute sovereignty of the nation state always results in supremacism because all feel threatened by the power of the other."* That is why after Westphalen many wars still raged throughout Europe. While we evolve towards a federal Europe the ones who keep praising the Nation State should learn that in the context of a Federation sovereignty is shared, aimed at solidarity.

But this aside.

The Constitution is America's highest form of codified law. It was established by the people and is therefore the foundation of the Nation. It is the Constitution of the people. To the establishment of a European Federation the same should be applied. Nothing charac-

terizes better the difference between the intergovernmental system – reconfirmed through consecutive treaties – and the Federation, constitutionally established by the people.

I am optimistic with regard to the question as to whether the European citizen would endorse such a Federation. Let's remember what Guy Verhofstadt states in his book 'The United States of Europe', namely the fact that three times (in 2003, 2004 and 2005) no less than 25,000 citizens from Member States were questioned about the European Constitution which at the time was being prepared: *"A clear majority found that there should be a Constitution, that there should be one Minister of Foreign Affairs for the Union, that there should be a European President and that the European Parliament should be granted more powers."* If this perception of European citizens is still valid after ten years we may count on a mandate of the people in favor of a European Constitution. Especially if that document – contrary to the previously drafted Constitution – will be compact and will be carrying the predicate 'federal'.

This quotation by Verhofstadt legitimizes the contradiction of an observation by Luuk van Middelaar: his statement that it is understandable that government leaders convene in the European Council to defend the interests of their own citizens. Of course, each country has citizens who see their interests as primary, requiring their leaders to fight for those when convened in Brussels. But when push comes to shove the majority of citizens think otherwise. The only thing they want is good governance, alert and able to anticipate to possible developments, bad or good, with an adequate approach to problems, the compass directed at taking care of common interests.

Esteemed Tombeur, with this Paper I have tried to explain that we should base our thoughts about the constitutional and institutional aspects of a federal Europe in the 21st century on the historical perspective of America at the end of the 18th century.



Tombeur, October 2012

PAPER 15

Tombeur confirms that the American Constitution should form the basis for the constitutional and institutional design of a European Constitution. He announces that he will add to this choice – in a later Paper – the value of the Swiss constitutional system. In this Paper, no. 15, he will elaborate on the choice of applying the American Constitution as a best practice due to demographic and social similarities between America and Europe. He refutes people who object to using this best practice for Europe due to incompatibility, by pointing out the many similarities between both continents. This Paper is crucial for the design of a federal European Constitution. Step by step Tombeur explains the conditions to be met for such a Constitution to be realized: the building blocks for the constitutional and institutional order of the Constitution to be designed. He poses the question to Klinkers whether the Convention of Philadelphia (1787) could be useful for the ideas of Guy Verhofstadt and Daniel Cohn-Bendit, to plan a Convention following the European elections in 2014 – a Convention aiming to establish a federal Europe. Furthermore, he asks Klinkers if a federal Europe should have a Presidential system or not.



Charles de Montesquieu

FAQ 20: Why is it not possible to create a European Federation by changing the Treaty of Lisbon?
This is not possible because that Treaty is filled with systemic errors. These errors destroy the system from within. Each attempt to repair that error only increases the problem. This error originated in the first official document that attempted to create European togetherness: the Schuman Plan of 1950. The fault was/is: wanting to create a Federation by a) a Treaty, b) ratified by Nation States. From that moment on the 'Europe to be united' was governed top-down, hierarchically by Government leaders. Instead, it should have been a) a Constitution, b) ratified by Citizens, because by definition a Federation possesses a bottom-up character through its democratic basis. Since this systemic error has been transferred to all following adaptations of European Treaties, even in the attempt at creating a European Constitution in 2003, any new change of the Treaties will host the same error and will disable the creation of a Federation. Moreover, any adaptation will even deteriorate the destructive character of the intergovernmental system – and therefore accelerate the resistance of more Citizens and States against the EU. For a further explanation see Papers no. 11 and 12.



ANTHONY GIDDENS

"Present-day intergovernmental Europe has too many restrictions. Government leaders always give way to national interests. (…) If the rules remain as they are, the Union has no future."

PAPER 15

Esteemed Klinkers, I have read with great interest your paper about the federal Constitution of the USA. It is an important example for any country that aspires to having a federal system, as authoritative authors have emphasized. The American Constitution is still considered to be the classical model for a Federation. Thus, it should serve as the model for a Europe that would like to become a Federation. This widely acknowledged value of the American Constitution and the fact that the problematic present intergovernmental European system resembles the problems of the 18th century American Confederation, are sufficient reasons to become inspired by the American Constitution. However, there are also different, possibly relevant, examples of stable federal Constitutions, for instance the Swiss one. This example is the more interesting since Switzerland – as a multiculturalist country – may be considered a micro-version of Europe.

My critical analysis in Paper no. 9 of US policy as off 1944 until the present should not prevent us from taking the American Constitution as a point of departure for designing the Constitution for a European Federation. US foreign policy, driven by nationalist interests, should

not make us forget what Europe fundamentally has in common with the United States: a representative democracy, the rule of law and the individual rights and liberties of its citizens.

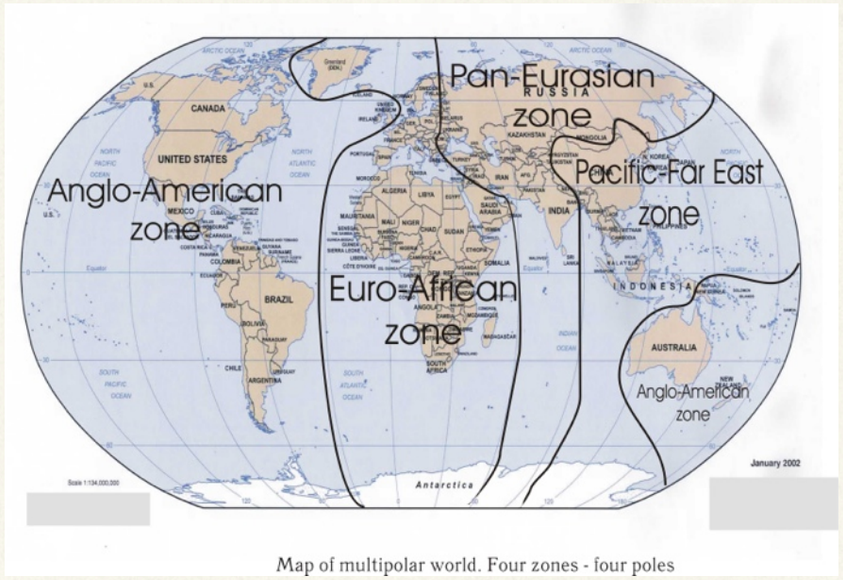
With my analysis in Paper no. 9 I only intended to stress the fact that Europe, both in earlier times and at present, has no permanent allies in this multipolar world, let alone friendly nations. It only has occasional allies, permanent competitors and (potential) enemies. In this world Europe has to stand up for itself as a whole because European countries can no longer cope with this on their own. Why? We have already covered this extensively. European intergovernmentalism stands in the way of a federal Europe that would be able to compete on a global level.

A poll by Gallup and the European Council on Foreign Relations (ECFR) in October 2007, just before the banking crisis, reveals that a relative majority wants more EU power and influence in world affairs. The following question was put forward: *"For the world to become a better place, do you believe that global influence of the following major powers should increase, should decrease or should remain about the same as now?"* Identified as major powers were Brazil, China, India, Iran, the EU, Russia, the USA and South Africa. Out of 57,000 people from 52 countries 51% of West Europeans stated that they would welcome more influence by the EU in the world, by far the highest score of the eight countries in question; followed by a group of scores nearer to each other, namely that of Africa (37%), Central and East Europe (36%) and North America (34%). The two other regions, Asia/Pacific and Latin America, followed at a larger distance with respectively 25% and 24%.

Ivan Krastev and Mark Leonard of the ECFR drew the following conclusions from this study: *"The findings of the Voice of the People poll (…) reveal a world that is neither unipolar nor keen to return to traditional power politics. Furthermore, it is a world that seems to be crying for greater European leadership. The paradox of the EU's power is that its strength may be rooted to some extent in the perception of its weakness. The fact that nobody is interested in balancing the EU may stem – at least in part – from a perception that the EU is unlikely to get its act together. Moreover, the decline of the EU's soft power in the ex-USSR, Turkey and the Balkans shows that 'softness' in the long run may generate sympathy, but not necessarily respect. Whilst legitimacy is an increasingly important element in global politics, the EU must not make the mistake of confusing popularity with power."*

Anyone who does not see our multipolar world, controlled by old and new major powers, cannot or does not want to see it. For those who do not (yet) want or are unable to see that today's world is no longer the world of the Congress of Vienna 1815, nor the world of 1948, I would like to quote some pertinent questions put forward by the British economist John Maynard Keynes: *"When events change, I change my mind. What do you do? When the facts change, I change my mind. What do you do, sir? When my information changes, I alter my conclusions. What do you do, sir? When someone persuades me that I am wrong, I change my mind. What do you do? …"* Yesterday's

answers to present-day's questions no longer work. Only idiots never change their opinion.



Map of multipolar world. Four zones - four poles

One might discuss if this picture is the best one to illustrate the fact that the United States of America is no longer the one and only polar. But there is no doubt that the present world has more than one polar.

Welcoming a Federation of States in his 'State of the Union' 2012 means that Barroso acknowledges that the present intergovernmental EU dysfunctions. However, in his conclusions he loses track halfway through. There is a lot of fuss about his hybrid declaration. Some people interpret his words as an attack on the European nation states. In my opinion, an attack means threatening the survival of (nation) states. Such an assertion is nonsense. Nothing is less true as far as the emergence of a real Federation is concerned. A European Federation will exist by virtue of two powers: the power of the citizens and the power of the States; with a predominant role for the citizens' representatives. That is where the center of gravity in the Federation's decision-making process will lie. No longer with the States, and certainly not with the heads of States or government leaders of the States, as is the case in the European Council. Nowadays a member of the executive power of a State needs to negotiate European interests with colleagues. Mission impossible.

This intergovernmental system disorganizes the European structure. The proof is the inflation of institutional treaties. Since the Treaty of the EU (Maastricht 1992) ten treaties have been concluded – not even including the accession of new Member States and the European Economic Area. This is one treaty every two year. This is a terrific pace, knowing that negotiations and ratification procedures require at least two years. The sustainability of those covenants is therefore practically zero.

History teaches us these lessons. To say that history is repeating itself worldwide would be an exaggeration. Nevertheless, we both concluded earlier that comparable situations occur in the world, although in different times and places. Unfortunately, mankind does not learn quickly, witnessing the long array of dictatorships and wars. Some people regard this to be no longer possible in Europe. Well, I am not really convinced of that, if I think of the recent Balkan conflicts and the challenges posed to Hungarian democracy. I am not one of those who are blind to threats of violence

4. Treaty change, 17/27 dimension and expanding public debate

a) Federation of nation states - Treaty change

A deep and genuine economic and monetary union, a political union, with a coherent foreign and defence policy, means ultimately that the present European Union must evolve.

Let's not be afraid of the words: we will need to move towards a federation of nation states. This is what we need. This is our political horizon.

This is what must guide our work in the years to come.

Today, I call for a federation of nation states. Not a superstate. A democratic federation of nation states that can tackle our common problems, through the sharing of sovereignty in a way that each country and each citizen are better equipped to control their own destiny. This is about the Union with the Member States, not against the Member States. In the age of globalisation pooled sovereignty means more power, not less.

And, I said it on purpose a federation of nation states because in these turbulent times these times of anxiety, we should not leave the defence of the nation just to the nationalists and populists. I believe in a Europe where people are proud of their nations but also proud to be European and proud of our European values.

Creating this federation of nation states will ultimately require a new Treaty.

I do not say this lightly. We are all aware how difficult treaty change has become.

It has to be well prepared.

Discussions on treaty change must not distract or delay us from doing what can and must be done already today.

A deep and genuine economic and monetary union can be started under the current Treaties, but can only be completed with changes in the treaties So let's start it now but let's have the horizon for the future present in our decisions of today.

Excerpt from 'The State of the Union', September 2012, concerning EC President Barroso's view on a 'Federation of Nations'. This has been refuted by Guy Verhofstadt: 'We do not need a Federation of Nations, but a Federation of Citizens. Citizens, not Nations, are the basis of a Federation."

or dictatorship. It is right that the European Union will receive the Nobel prize for peace, but that is ten years too late: the admission of eight Central and Eastern European states to the EU would have been a more suitable moment.

In the context of my acceptance of your proposal to use the American Constitution as example for a European Constitution I would like to put forward the Swiss Constitution as well. This document has proven to be of great value since 1848, inter alia by being adjusted many times in the face of changing circumstances, including the possibility to create new 'cantons' . Switzerland is also of interest as it may be considered a micro-version of Europe. The country hosts linguistic, cultural and religious diversity, with four official languages. At first it was a Confederation, then a stable Federation. I do not ignore Europe's variety, as I explained in Paper no. 9. Therefore I want to investigate in another Paper how Switzerland has dealt with this remarkable diversity. Let us study both Constitutions, compare them and use them for the design of a European Constitution, with the American Constitution as the basis. A draft Constitution that we would put up for debate and improvement in relevant circles. What do you think about that?

However, before I elaborate on my ideas regarding the foundation of a federal European Constitution I would like to fight those who claim that a homogeneous people is needed in order to be able to create a Federation.

I would like to emphasize that linguistic, cultural and religious diversity in no way prevent the emergence of a federal Europe. For that it would be sufficient to conclude that there are certain common values, norms and interests. Undoubtedly, these already exist on a European scale. It is this communality that should be fostered by the Federation, and not by the States since they are in no way suited to that task.

The multicultural debate is not relevant for a European Federation. Baudet's tirade against multiculturalism, as one of the ways in which Europe is supposedly being attacked, seems misplaced or at least curious. Wanting to deter people coming from other parts of the world, in order to conserve the singularity of European nation states, seems a strange approach for a historian. Migration has existed throughout human history. And this will never stop. Moreover, migration stimulates the evolution of cultures, morals and languages. They also learn from competing with one another.

Baudet might benefit from the wise words by James Madison, when discussing the subject of citizenship for immigrants, during the Convention of Philadelphia on August 9th 1787. He thought any restriction on immigration in the Constitution unnecessary and improper. Unnecessary, because the legislative branch had the right to make special rules on immigration, so there was no need for regulating this subject in de Constitution. Improper, because it aired non-liberty, it would restrain the power of the legislative branch and because it would discourage the most desirable class of people, among which a great number of respectable Europeans, from emigrating to the United States.

Let us have a look at the following example. Under the title 'The Texas Model: Prosperity in the Lone Star State and Lessons for America', a book written by Chuck Devore in which Texas is promoted along the following lines: *"The Texas Model: Prosperity in the Lone Star State and Lessons for America is a project of the Texas Public Policy Foundation. The book compares Texas to its large state peers and details why Texas is increasingly the destination for Americans seeking a better life. The Texas Model describes a state with low taxes, modest government, and a lawsuit climate that allows entrepreneurship to flourish while encouraging job creation."* That is the power of the American constitutional federal system: states compete with each other to create better provisions for their citizens. All of this under the slogan that government exists for the pursuit of its citizens' happiness.

If the West-German tribe of the Batavians, who well before Christ lived in what is now the Netherlands, and the Gauls in present-day Belgium, had been able, until this century, to follow Baudet's point of view, namely closing the borders to all newcomers, how primitively would we live today? This does not prevent me from concluding that there is a complete lack of effective migration policy on all European levels, as is the case in Australia, Canada, the USA and elsewhere. A thoughtful, organized migration to and from the EU would compensate for the social-economical aging of Europe.

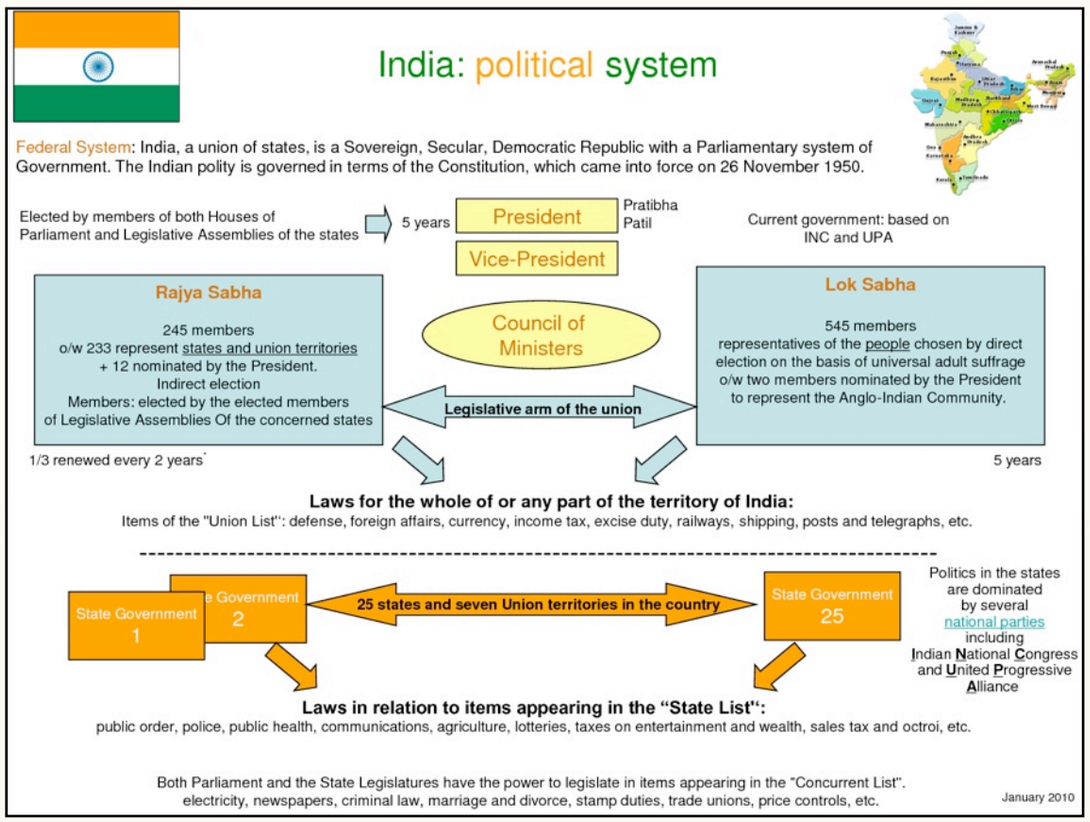
With respect to the detail of – hated by some people – multiculturalism, namely the claim that Europe faces the threat of being overpowered by Muslims, I would like to quote the following passage from 'The End of the West' by David Marquand: *"The notion that a vast army of Muslims lurks in North Africa and the Middle East, waiting to colonize Europe, is straightforward paranoia. The parallel between modern European Muslims and Russian Bolsheviks ninety years ago is an example of the higher lunacy."* Well, now it is someone else who tells you this.

It suffices to compare Europe with, for instance, the United States of America and Switzerland to discover that these and other federations at some point emerged due to military and economic factors, despite their linguistic and cultural diversities. Nevertheless I hear and read that some people, including the earlier quoted Larry Siedentop, emphasize that this diversity creates an enormous obstacle to the establishment of a European Federation: Europe would be too diverse to create a political whole on its own. Its diversity would make a federal Europe impossible, contrary to the more homogeneous America. I refute this claim absolutely. The issue that there should be one homogeneous people in order to be able to create a Federation is a non-issue. As you, esteemed Klinkers, already stated: within a Federation the Germans remain German, the French remain French, the British remain British, etc.

Thus I oppose the claim that the USA is more homogeneous than Europe. Let me once again quote David Marquand (after his approving quote of Jürgen Habermas with the sentence "Peoples emerge only with the constitutions of their states"): *"Much the same*

is true for the United States. There was no 'uniform people' in the thinly settled, poorly developed former British colonies, strung out along the Atlantic seaboard and largely populated by subsistence farmers, in the decades following the American Revolution. Socially and culturally, the gifted and imaginative political elite that crafted the federal Constitution was far from representative of the people for whom it spoke."

This relative homogeneity has remained constant throughout the ages. Immigrants from Europe have not only conserved their culture and customs; in many of their customs they still retain their previous language – linguistics call this functional bilingualism within one territory: diglossy. Even communities from a different origin and the old American nations reveal different ways of life, whether they are Afro-Americans, Latino's, or Indian. Nevertheless, most Americans share a certain sense of communality. Nobody questions the Federation. At the most they ask if the division of power between the federal level and the level of the states is still in balance. And what to say about the requirement of homogeneity if one looks at federal Brazil and federal India, the largest democratic federation in the world with twenty two (of the three hundred and fifty) constitutionally acknowledged languages?

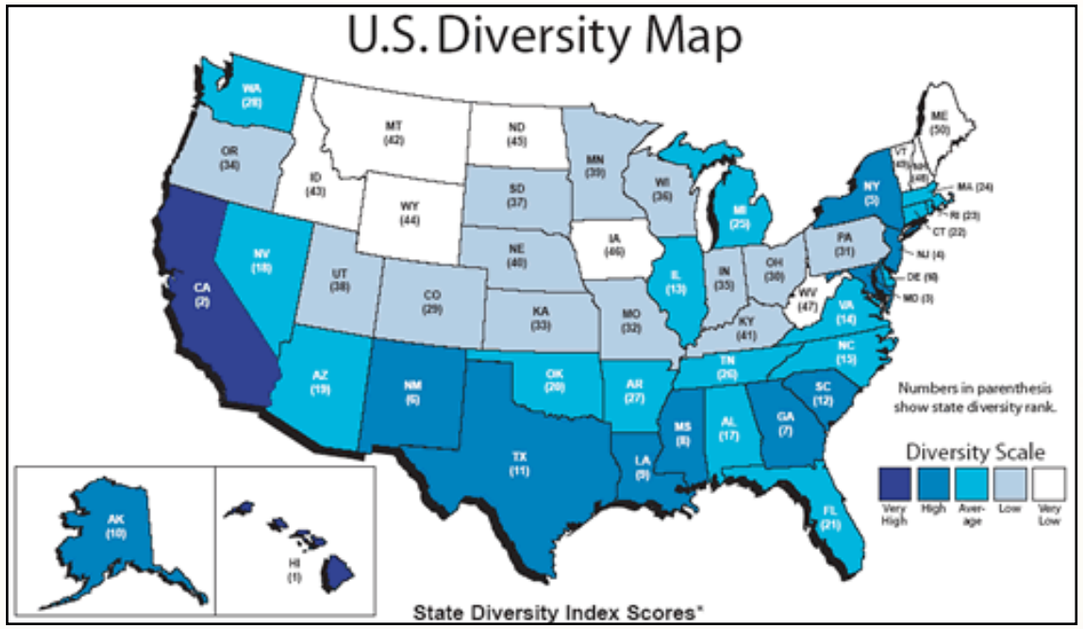


Why would this sense of communality not be applicable to Europe? Besides a sense of regional and national identity? Why wouldn't Europeans accept one or a limited number of languages as their lingua franca in public life? In earlier days they used Latin for this purpose. People have more than one identity, a layered group-identity next to their individual identity. That identity is relative and flexible. Sometimes I feel like an inhabitant of Antwerp, a South Brabander, a Dutch Belgian (Flemish), or a Belgian all over. On other occasions I feel like a Southern Dutchman, a Benelux or European citizen. Each identity depends on time and location. It is possible that more identities emerge, or disappear. Everybody recognizes latent identities in themselves, which become manifest under certain conditions. In you, Klinkers, I recognize the Limburger, the Hollander, the half Flemish, the Portuguese and the Surinamer, due to the countries where you lived and where you were influenced by specific values and norms. And of course an unconditional European identity. I can assure you, from my own experience, that it is a pleasant surprise, while traveling as a European for two

weeks in , to meet with a Spanish couple. A bit of European kinship, far from home.

Therefore, I maintain that cultural diversity does not make it difficult for Europe to create a Federation. Look at the growth of diversity in the USA and the stability of multicultural Switzerland, a country that already boasted a variety of cultures at the birth of its Confederation, followed by a Federation. The driving force and cement for a Federation is not necessarily of a linguistic or cultural nature.

The history of the world proves that an external factor, not an internal one, is often decisive for choosing a federal state form, as was the case in the USA. You have already indicated that many others have acknowledged that fact, for instance Glucksmann. William Ryker is of the same opinion. He claims that military cooperation is the most frequent trigger for opting for a Federation; always intended as an instrument to achieve goals such as security, prosperity and welfare. Quoting him from the document 'Federalizing Europe?': *"What goals are sufficiently desired to lead to a federation? The goal most frequently observed is military, although, of course, that goal is always instrumental. (…) Success in war depends on resources."* After that he mentions four ways of federalizing to acquire and maintain resources. At least one option seems appropriate for Europe, as I already wrote in Paper no. 9, namely the merging of resources, all essential to strengthen Europe against non-European competitors.





Exactly the internal and external economic, social and even military or policing challenges are incentives for Europe to cope with the increasing threats of growing competition by creating a federal Europe. The administrative enlargement, widening the governmental scale, is Europe's pre-eminent trump card. It is highly necessary to play that trump card by creating a Federation. Increased competition by sub-continental economies and political instability at the eastern and southern borders of Europe force us to take that step. A wake-up call for Europe.

Enough of my plea for a federal Europe. Now I will react to your offer to design a constitutional framework – by whatever name, for instance a Constitution – even though Europe has had a bad experience with such a project. You already mentioned that when you referred to the rejected '2004 Constitutional Treaty'. That was not a Constitution, but yet another treaty between European States – a book of 63,000 words and 448 articles, the basis for the Treaty of Lisbon.

I gladly accept your offer, esteemed Klinkers, to write with you a European Constitution, but first I would like to receive your opinion on the following questions and considerations. Our agreement about these matters should form the framework for our constitutional draft. Here they are.

A matter to be considered by any designer of a federal Europe is the necessity that this federal composition will be brand new for Europe. It must be completely different from what most of the old and historical European countries have experienced before – their history made them into what they are now. Only four of the over thirty European States are a Federation: Belgium, Germany, Austria and Switzerland (though not a EU-country). Federalism is not a well-known phenomenon in Europe. Here and there we see processes of regionalization, for instance in Spain and Italy, but that is not federalism.

As a result, a number of states will perceive a Federal Europe as a completely new state. A super state – a word frequently used in the media when talking about transforming Europe. This is the way in which the British and Irish islands look at it traditionally. But also countries such as the Netherlands and France, and States that have conquered or reconquered their sovereignty since 1989; insofar as that word still is significant. Those countries fear Europe operating like a State. However, they do not see that they cling to outdated symbols. A symbol such as national sovereignty may be interesting from a political point of view, but when such symbols frustrate the sense of reality, these followers of meaningless symbols are wrong. Others let themselves being misled under the influence of social psychology: they project the dangers of dictatorship and war – which have occurred primarily due to state-nationalism – to Europe as an organization. That perception is absurd. Europe as a whole is not to blame for the age-long misery of wars because

there were hardly any forms of intergovernmentalism in the first half of the 20th century. Both misconceptions have to give way to international reality: the diversity of external threats for Europe. It is a matter of a mind shift, a matter of stepping out of the patterns of outdated thoughts and behaviors. Out of the box, as you have justly written, dear Klinkers.

To bring on board Europe's opponents I propose to make the European Constitution not resemble a stately constitution too much. With this I mean that such a Constitution should clearly not resemble a super state. In Europe all States have written constitutions, except for the United Kingdom. These constitutions are much alike: they all contain the organization of a horizontal division of powers between the three branches, the trias politica, their relationships and the rights and liberties of the citizens. This brings me to the option not to include a Bill of Rights in a European Constitution. It would be sufficient to only refer to those rights and liberties that have already been guaranteed in treaties, for instance in the Charter of Fundamental Rights of the European Union.

What to do with the three separated powers, the trias politica? In the tradition of Montesquieu the European Constitution should – in my view – describe which powers the branches possess, and do not possess, when they are obliged to cooperate and how they control one another. Worldwide states have described this threefold organization in various ways. The constitutional systems in Europe are much alike, with the exception of the French. France has a Presidential system, while the other states have a Parliamentary system.

This brings me to the question, which type of Federation would be the best for Europe? In Paper no. 5 I stated that each Federation has specific characteristics; they can be divided according to certain criteria.

We agreed that intergovernmentalism by the Governments of the states has led Europe down a dead-end street. Knowing this, do you agree that the Constitution should organize the Federation in such a way that it will not depend – as far as its operation is concerned – on the Member States, to prevent this reoccurring deadlock? With attention to an effective representation of the citizens from as many States as possible.

These considerations bring me to drawing the European Federation with the following prime characteristics: exclusively qualified, autarkic, institutionally threefold, and intra-governmentally organized. I have mentioned these concepts already in Paper no. 5. With pleasure I explain them again in this context.

For the exercise of the federal powers one should not handle functionalism again as a means to making and enforcing European policies (functionalism is doing whatever Brussels thinks is right for Europe). That is why I propose that the European Federation only

exercises those powers which are exclusively constitutionally assigned – the Federation should be exclusively responsible for regulating certain matters. This implies a listing of specific European policy domains – a subject that the Germans call Kompetenz Katalog: a catalogue that limitative enumerates the Federation's competence – and that this list can only be altered through the unanimous decision of the States. The other, unlisted domains remain with the States. This is consistent with the analogy of the Association of Owners of apartment buildings that you used to explain that the board of such an association possesses powers of its own, while the owners run their own apartment as they wish. Without a hierarchy top down or vice versa. Thus, the exclusive division of sovereignty between the Member States on the one hand and the federal body on the other, rules out competing policies between both layers so that a hierarchy of federal law making, respectively law making by Member States is superfluous. This system limits the chance of conflicts when the federal body and the Member States exercise their respective powers. In case such conflicts nevertheless arise other instruments are used, such as legal advisory bodies or the judicial branch.

A federal Europe should possess means of its own – it should be autarkic. That implies having its own fiscal system to avoid that the Federation too, with respect to its budget, is condemned to look passively at the sad theater that is played annually by the States when settling the EU's multiannual budget – a subject described by Fernand Jadoul in Paper no. 13. This aspect is to be compared with the owners of the apartments: they pay a regular sum to enable the board of the association to take care of their common interests. In this way one prevents bartering with more losers than winners, always followed by nationalist slogans such as "I want my money back". Without fiscal independence the European Federation cannot operate effectively. The parole should be "No representation without taxation". The European fiscal domain should be linked to the policy domains, constitutionally assigned to the federal body within agreed parameters. The Constitution should describe the fiscal powers, if only through the exclusion of certain tax bases.

Institutionally Europe should, again for reasons of independent governing, apart from the Member States, possess legislative, executive and judicial branches: a trias politica of its own. Europe should not be organized functionally as is the case in Germany where the 'Bond' (the federal body) is entitled to make laws, but where the execution of the laws is entrusted to the 'Länder' (the Member States). Since we should opt for entrusting the federal body with exclusive policy domains it seems appropriate to entrust that body also with the three branches of government; this also supports the common trust that federal legislation is applied and enforced throughout the Federation. This raises questions with respect to the design of the bicameral system, the relationship between both Chambers and the powers of the executive branch. There should be a federal Court of Justice to guarantee unity with respect to jurisdiction.

Now I would like to deal with the matter of organizing the legislative power as such. A classical federation has two Chambers, one for the citizens, representing the whole federation directly, and another representing the states. This second Chamber embodies the non-federal part of sovereignty. To have a Chamber like that seems to me necessary in this Europe that is perceived as highly diverse and historically heavy burdened. Thus my choice is: a legislative branch with two Chambers. The federal Constitution of Europe should limit as much as possible the interference between the functioning of the federal body and the States; both levels of government should be able to operate independently of each other, accompanied by instruments that prevent them from obstructing one another.

At the end of my contribution with respect to the three branches I would like to propose exclusivity of the political mandate. The Constitution should exclude members of the federal Chamber (i.e. the Chamber of the citizens' representatives) from having any other political function, on whatever level of government. The representatives of the people should be elected by the people, and the state's representatives by the state's legislatures. As has been the case in the USA, which you have described already in Paper no. 14 about the American Constitution. But let's discuss this matter again when designing the European Constitution.

Striking in the American Constitution is the Presidential system. This means that the President is not responsible or accountable to Congress. He, or she, is not appointed or elected by Congress but by the people through a system of Electoral Colleges per State. On the other hand the President cannot dissolve Congress. However, he can veto laws drafted by Congress. I wonder if such a system would be suitable for Europe. Is such a Presidential power, exercised by one person, not going too far? What are your thoughts on this? I eagerly await your response.

This is where I would like to stop elaborating on the constitutional characteristics of the trias politica. I propose that we start drafting a federal European Constitution not before we have agreed about its main elements. First I would like to receive your reaction to the matters I have raised.

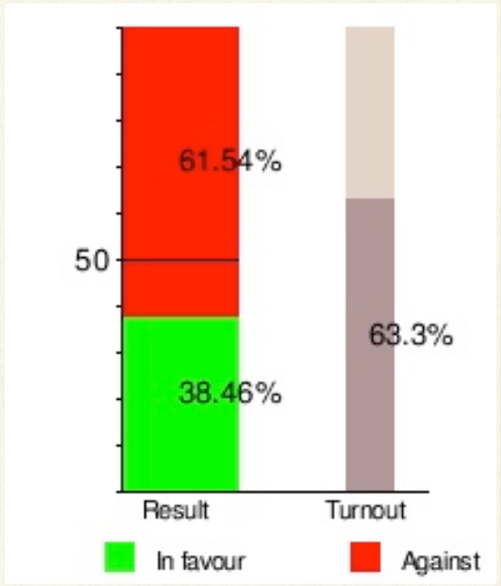
One main aspect that we should discuss is the issue of choosing the limitative enumerated policy domains for the Federation. Because this limitative enumeration – leaving the Member States sovereign in all other domains – may even convince the most staunch anti-federalist that a European Federation is no super state, nor will it evaporate the diverse nation states. In professional terms: the non-exclusively assigned policy domains – the so-called residuary domains – remain with the Member States.

One more thing. The federal European Constitution should have the means to take care of the common interests of its citizens, not of the interests of the states. Within the constitutional framework

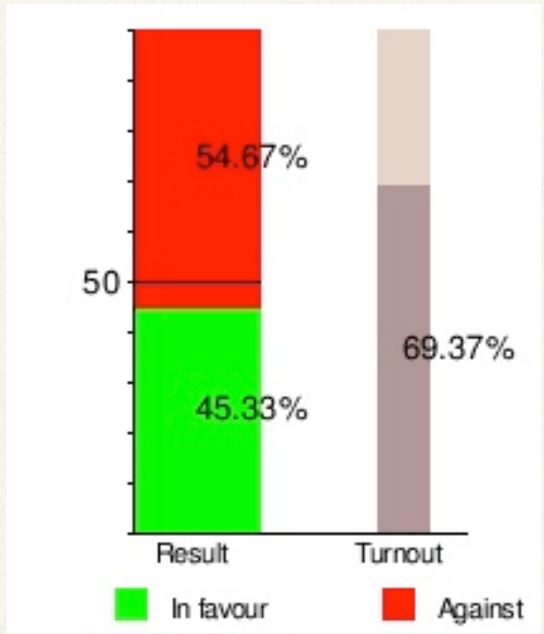
the states can take care of their interests themselves. Which European interests could this cover? In other words: what is the content of the concrete communality? Well, very simple as far as I am concerned. All Europeans share the same basis interests: security, health and jobs – as a person, entrepreneur, laborer or consumer our nationality and our mother tongue are rather irrelevant. To take care of these kinds of interests the Federation Europe should be the primary watchdog, this should not lie with the individual States anymore. What do you think?

Finally I would like to ask your opinion about the course to be followed, the process. In 2001 intergovernmental Europe established a Convention, but that ended in anticlimax: its result, the so-called 'Constitutional Treaty' – what's in a name? – was rejected in 2005 by a referendum in the Netherlands and France. It has been replaced by the even more complex Treaty of Lisbon and its array of amendments. Yes, each State had the right to veto it: one veto would have been enough to send this 'Constitutional Treaty' to deep water. That is why each country was allowed to include differentiations and exceptions in the text, resulting in the legal monster that you have described earlier. Let us learn from that failure and let us do it differently now, but how would this best be achieved?

How could we finally achieve a well-designed federal Constitution? What institutions, which constitutional drafters (the so-called constituents) are needed? From where do the constituents draw their power to design a Constitution? The States, nor intergovernmental Europe plus the European Committee (which increasingly resembles the Council's secretariat), nor the European Parliament that is elected within stately constituencies (thus without European legitimization, but certainly with powers) could play a role in this. Who or what could? And how should this constitutional project be set up? Would the Convention of Philadelphia 1787 serve as an example for today's Europe? I wonder how this Convention was established in such a way that they succeeded in accepting a federal Constitution. How did they manage to organize the support? And what do you think about the plan by Guy Verhofstadt and Daniel Cohn-Bendit to organize such a federal convention fol-



Result of the 2005 referendum in the Netherlands.



Result of the French referendum 2005.

lowing the European elections in 2014? Could you, being a scientist in public administration, elaborate on that?

With pleasure I await your opinion, esteemed Klinkers, on all matters that I have laid before you in this paper. In the meantime I will study the Swiss Federation.



Klinkers, October 2012

PAPER 16

In Paper no. 16 Klinkers elaborates on what occurred at the Convention of Philadelphia (1787). He outlines the laborious process to create the federal Constitution: two steps forward and one step back. When the founding fathers of the American Constitution put forward a coherent argument regarding a constitutional aspect there were always opponents who would argue the confederal point of view. Nevertheless, after six months of debate the majority of delegates opted for the federal draft. In answering Tombeur's questions put forward in a previous Paper regarding the idea of Verhofstadt and Cohn-Bendit to organize such a federal Convention following the 2014 EU-elections, Klinkers states that this must be considered a strategic mistake: such a Convention should not take place after the EU-elections but rather in 2013. In his opinion the main focus of these elections should be the choice to vote either for or against federalization.



Immanuel Kant

FAQ 21: What is really so bad about the Treaty of Lisbon?

The Treaty of Lisbon is the worst legal document ever written in the history of Europe. The nucleus of legislating doctrine is to only make generally binding rules. And these rules have to be clear. However, the Treaty of Lisbon – consisting of two sub-treaties with over 400 articles – is ambiguous and towards the end comprises dozens of Protocols indicating how these articles should be applied, then followed by dozens of exceptions to these articles. This is the worst thing one can do in the field of law making: writing exceptions to general rules. This is why, with respect to the Treaty of Lisbon, the old proverb is applicable: the more rules, the more fools. See Papers no. 1-5, 14 and 21-24.



GEORGE WASHINGTON

"There is nothing which can better deserve our patronage than the promotion of science and literature. Knowledge is in every country the surest basis of public happiness."

PAPER 16

Dear Tombeur, let me start by answering your questions put forward in Paper no. 15. I gladly agree with your proposal to also consider – when drafting a concept for a European federal Constitution – the Swiss Constitution.

Furthermore, I am in agreement with your ideas on the constitutional and institutional contours of a European federal Constitution. Especially the choice to assign to the federal body a limitative list of responsibilities should prevent the impression that we propose a super state. Such a limitative enumeration of powers for the federal body eliminates the perfidious working of the present EU-principle of subsidiarity altogether. I will elaborate on this later in this Paper. The question relating to the way in which the constituents should establish a federal Constitution should be dealt with once we have drafted our own model for a federal European Constitution.

With respect to one aspect in your discourse I have to make an observation. When you speak about one of the powers of the American

President – the right to veto draft laws of the Houses of Congress – you ask if such a regime would be suitable for Europe. The constitutionally supported answer is: yes, it would. But you only referred to one part of the legal system. The other part is that, based on the American Constitution, a Presidential veto can be overruled by a two third majority in Congress. Thus, the President is not all-mighty. This is one of the many checks and balances that the Americans have formulated within the concept of the trias politica.

Furthermore, I am of the opinion that the Presidential system is a relief when compared with the parliamentary democracy that exists in most European States. However, I would like to reserve my arguments supporting that statement for the next Paper. There I will have more room to explain what I mean by this.

Finally I share your view that the 18th century as well as the present situation in America is comparable with the current demographic and financial-economic situation in Europe. One only has to read Geert Mak 's brilliant book 'Reizen zonder John' (Travelling without John) to see these parallels in wealth and poverty, in progress and stagnation, in political stand-still and sudden changes, in urbanization and rural exodus. This insight grows on you when you also read the aforementioned book 'Alle Presidenten' (All Presidents) by Frans Verhagen. This exposé of the political and social circumstances under which the 44 Presidents were elected and functioned, deepens one's insight into American reality as described so strikingly by Geert Mak.

Now I begin with your final question in Paper no. 15. You would like to know in what respect the Convention of Philadelphia in 1787 could serve as an example for present-day Europe. To answer that question properly I first have to discuss the book 'For Europe' by Guy Verhofstadt and Daniel Cohn-Bendit, published October 1st, 2012. Verhofstadt is chairman of the Alliance of Liberals and Democrats for Europe (ALDE) in the European Parliament (EP);



Guy Verhofstadt and Daniel Cohn-Bendit: 'European Leaders of the year 2013'.

Cohn-Bendit is co-chairman of the Greens/Free European Alliance in the same EP. For me, their document evokes admiration and bewilderment. I have to elaborate on this before I can illustrate the significance of the Convention of Philadelphia.

Why admiration for that book? Both authors belong to a special category of politicians: they write books. That is peculiar. Not only because most politicians, wherever in the world, do not write



"In order to give Europe a new momentum, we must resolutely play the European card. The card of a continent that has never offered us so much prosperity, so much peace, so many rights and so many prospects. We must not allow purely national considerations to thwart those prospects."

books, but because laying down a political ideology makes them vulnerable. That requires courage. The written word can be read, commented and criticized endlessly. The spoken word, on the contrary, cannot be held up easily by political opponents. It is fluid. And easily dismissed by a strong opposition as a misunderstood observation. But once on paper, the pattern of the writer's political values and norms are on the table, naked, ready to be dissected by ruthless surgeons with sharp scalpels.

In this book they put their hearts on their sleeves. Rarely have I read a document – partly a story, partly an interview – that illuminates in such an enthusiastic and passionate way a political position. Nothing, and nothing indeed, is formulated vaguely, indirectly, cryptically or with reservation. Word after word, sentence after sentence, the authors explain at a raging pace the rather sad deficiencies of the current intergovernmental system. This is all supported by a powerful array of arguments, facts and figures – all in all, a strong incentive indeed for adopting a federal system. For convinced European federalists this book is a veritable feast – and thus a horror for anti-federalists.

It is hard to understand why these two seasoned politicians have let themselves go so far. Once more, for me this book underlines the correct path that you and I have to walk towards the destination called 'Federal Europe'. But people who reject a federal Europe – either because they have what they perceive to be sincere reasons, or (as is the case with 99% of people) they just do not

know what they are talking about – receive in the first three/four pages of that book so many blows and kicks that they stop reading. As a present day 'J'accuse …' in the style of Emile's Zola press article about the officer Dreyfus' case, accused of high treason in France over a century ago, 'For Europe' puts down mercilessly anybody who may have the guts to play down or deny the correctness of the required federal future. It is doubtful if precisely those people, for whom they are ringing the bell, will turn 180 degrees. It is more likely that they will attempt to dig deeper trenches to defend the intergovernmental system against attacks like this. Why both authors did not endeavor to argue more pragmatically is from my point of view bewildering. They walk too far in front of the music and cannot say that this is because the others are walking too slowly; the others do not get the chance to keep up or catch up with them. That is why their writing sometimes resembles a pamphlet rather than a well-balanced book.

Another aspect of bewilderment is the recurrent misuse – also in other books by Verhofstadt – of the word 'integration' or 'integrated'. In 'For Europe' the required federalization is repeatedly argued by the need or necessity for more integration of the Member States. We see this claim made by many others, among whom, as said before, in the 'State of the Union' 2012 by José Manuel Barroso. Once again, integration is a beautiful concept, but one has to be careful where and how to use it. The way it is used in 'For Europe' suggests evaporating, harmonizing, dissolving individual nations. And especially that kind of perception of the word 'integration' is an important source of resistance against federalization. The authors should have made clear that due to the vertical division of powers in a federal system a separate complex of powers arises above the permanent sovereign powers of the Member States, but not operating hierarchically top down, as is the case in the present intergovernmental system; with each level operating independently, while the upper level takes care of matters that individual states cannot take care of (anymore) – for instance foreign affairs, finance and economics of the federal state, defense and some other domains. You already mentioned this in Paper no. 15, when referring to the concept of exclusive powers. There, and there alone, in the upper federal level, the word 'integration' is appropriate, in the sense that domains that at first were controlled by separate States, in a Federation are taken care of communally by a federal body above the States. The reasons with which both authors argue why separate Member States do not have any chance of taking care of those domains individually against America, India, Brazil (all federations!) and China, as well as against some other emerging world powers, correspond completely with what you – esteemed Tombeur – have outlined already thoroughly in Paper no. 9.

The wrong use of the word 'integration' resembles another aspect of bewilderment: the almost complete lack of any position or proposition of a constitutional and institutional nature. The authors do not explain what a Federation entails legally or organizationally. This is a severe shortcoming because a calm and prag-

matic explanation of the aspects in which a federal organization differs from the intergovernmental system may make it possible to attract promoters of the federal system. The only text of a constitutional and institutional nature is their plea for a Convention (with



George Washington, presiding over the Convention of Philadelphia. Signing the draft Constitution September 1787.

delegates from all levels of society) soon after the 2014 European elections, aiming at the creation of a Federal European Union. They support that wish by referring to the Convention of Philadelphia, which in 1787 managed to transform the loosely organized Confederation into a tight Federal cooperation under the name of the United States of America.

Only now I can begin to answer your question in what respect can the 1787 Convention serve as an example for our federal Europe of tomorrow. In my view, Verhofstadt and Cohn-Bendit are making a strategic mistake. Their Convention should not take place after 2014, but before the European elections. Thus in 2013. The result of that Convention should be the input for the election battle: pro or against federalization, all or nothing. The organization of such a Convention should begin now. Why? To counter some ideas, plans, proposals, studies and reports that are being prepared right now by people such as Van Rompuy, Barroso, Westerwelle and who else, under the guise of 'federalization', in effect creating more intergovernmentalism. When it will be clear that the year 2013 will be dominated by a Convention dedicated to composing a federal Europe, chances are that these plans et cetera – in as far as they will actually deepen the intergovernmental system – will be put on hold.

Now the Philadelphia Convention itself. Again a historical perspective as a best practice to learn from. Why did they organize that Convention? After a handful of British colonies (dominions) seceded from Great Britain (concluded with Thomas Jefferson's Declaration of Independence in 1776) thirteen States established a governing system of their own. Together they formed a Confederation, based on a treaty entitled 'Articles of Confederation' (1777/1781) aimed at taking care of common interests together. However, without creating a separate organ above these Confederal States that could actually take care of that common decision making. Prior to

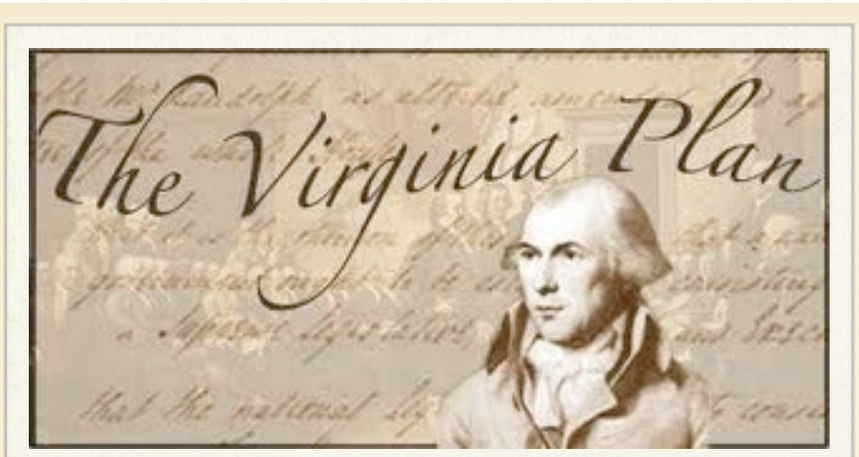
1776 newspapers and other magazines about stately matters were already filled with hundreds of pamphlets and articles, only to increase after establishing the 'Articles of Confederation'. Each State designed its own system. In a process of moving from 'colony to state' they came hopelessly entangled in a web of opposing views and models.

It was a tiring and often discouraging quest for the basic principles and the primary institutes of a free government. The assumption that they had created a paradise for themselves – with a minimum of stately conditions – following the struggle for independence, in practice appeared disappointing. Around 1787 all Confederal States had discussed thoroughly, and even practiced, the organization of self-government, without any uniformity between the States. Some States opted for a system of one Chamber, other chose a bicameral system. Some States introduced fundamental rights, Bills of Rights. After eleven years of experiments the governmental weaknesses became evident. Above all, there was one dominating problem: a lack of money to finance matters of general interest. The Confederal Parliament could print money, but that money had no value. None of the Confederal States paid their taxes on time, or they did not pay at all. There was no communal army to defend the Confederation as an independent state against possible enemies. They only had a loosely united bunch of underpaid mercenaries. After eleven years of confederal muddling through there was nothing to prove that they had grown to be a proud, respected, independent, sovereign nation. Time to get together.

Besides: a more thorough analysis of the many weaknesses and shortcomings of the confederal system of that time would make clear that today's European Union reveals exactly the same flaws. However, somewhat different from the case in America – where it took only eleven years to understand that they had to replace the Confederation with a Federation – we in Europe have been floundering since 1950 with sticking plasters on the stinking wounds of our own European confederal system.

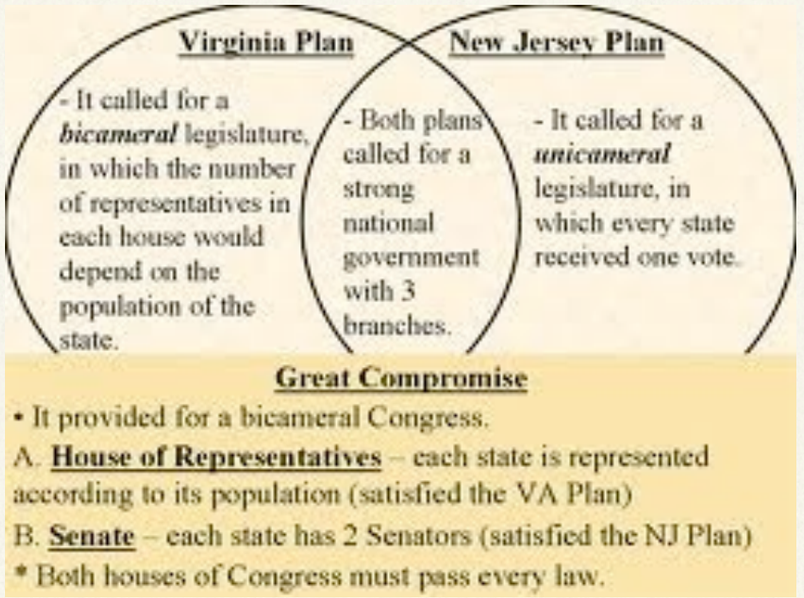
After some failed attempts in 1785 and 1786 at organizing a communal deliberation, in May 1787 – on the initiative of, among others, James Madison, Alexander Hamilton and George Washington – in Philadelphia a group of 55 people gathered as delegates of twelve of the thirteen Confederal States. Even though their knowledge and experience with stately principles was heterogeneous, on certain issues they shared the same visions, such as the necessity of representation, and therefore rejecting democracy in the sense of 'everybody is entitled to co-decide on everything'. They also accepted James Madison's formula, later elaborated by him in Federalist Paper 51: *"You must first enable the government to control the governed; and in the next place, oblige to control itself."* This formula has been the guiding motive to restrict the federal Constitution as a product of the Convention of Philadelphia to a firm construction of the trias politica: balancing the three branches in order to prevent one from overruling the other; this guarantees liberty, never again an oppressor.

The Convention of Philadelphia had to debate difficult theoretical problems of a stately nature, while the delegates differed considerably: socially, ethnically, religiously and with respect to prosperity. They all held opinions of their own about the necessary magnitude of the Confederation, foreign affairs and commerce, division of state and church, private property, speculation on land, slavery and financial state affairs. This is why it is remarkable that during the discourse a reversal of 180 degrees took place. They were gathered to amend the existing confederal treaty of the 'Articles of Confederation' in order to strengthen the Confederation. Instead, the Convention decided as early as June 1787 – on the basis of a proposal by James Madison – to design something completely new, a federal system.



James Madison's Virginia Plan contained the main principles for the federal constitution

This proposal by Madison is known as the 'Virginia Plan', and it was embraced by the larger States. It leant heavily on the ideas of John Locke (a government should have its citizens' support) and on those of Montesquieu (one should separate the three branches of government). The delegates of the smaller States experienced this plan as a 'coup d'etat' and tried to convert it by proposing an opposite plan, known as the 'New Jersey Plan'. This countermove failed, however, in the sense that parties came to an agreement in the so-called 'Great Compromise' of July 6th, 1787.



The Virginia Plan & The New Jersey Plan, amalgamated in the Great Compromise, basis for the actual draft federal constitution.

This led to the communal decision to have a federal system with a Lower House guaranteeing the representative democracy by a House of Representatives in proportion to the number of inhabitants per State, and a Higher House with two representatives per State, thus not linked to the size of the population. After that point had been passed the decision-making speed went up. Within

weeks they agreed on the powers of the three branches, the election of the President, the organization of the judicial system and the manner of ratification of the draft Constitution.

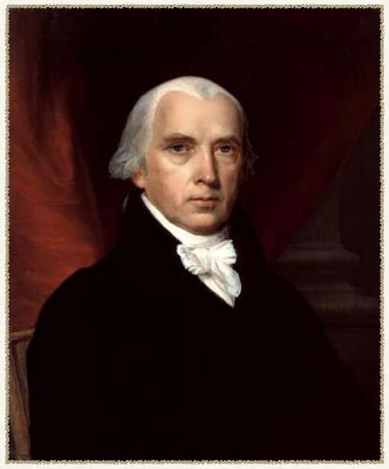
This draft Constitution was already on the table on August 6th, 1787. Remarkable in this is the limitative enumeration of the powers of the Houses of Congress. This is the location I refer to in the second section of this Paper: the necessity to project this matter against the so-called principle of 'subsidiarity' in the present EU. The principle of subsidiarity means that EU-Member States should be allowed to do what can been done best by themselves, rather than by Brussels. While the principle behind this was to leave the Member State's sovereign decision-making as untouched as possible, in practice the intergovernmental EU evolved into a centrally imposed uniformity system: top down hierarchical decision-making by government leaders and heads of states in the European Council. I will not repeat what has been said in previous Papers about this. It is enough to conclude that the principle of subsidiarity, if it ever practically existed, died with the creation of the European Council – causing an increasing revolt by people and politicians in the Member States against this violation of the principle, which in effect does erode the nation's sovereignty.

While this systemic flaw has already been discussed hundreds of times for many years, it took the delegates of the Convention of Philadelphia only a couple of weeks to throw it into the waste paper basket. What was the case? The aforementioned Madison's 'Virginia Plan' contained a text to grant Congress the power *"… to legislate in all cases, to which the separate States are incompetent …"* The delegates understood quite well that this would be a wide open gateway for Congress to act as a super power, legally empowered to overrule each State's legislature. In the debate about this matter the concept of the necessary vertical division of powers arose, resulting in the decision to limit, by enumerating, the powers of the Houses of Congress.

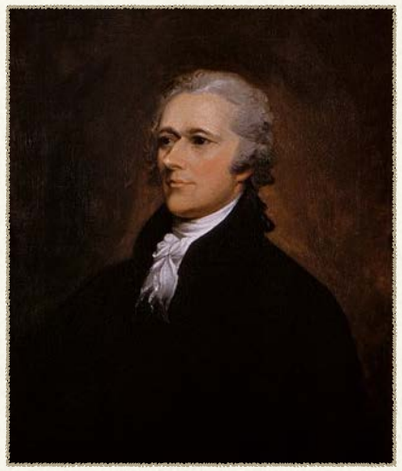
This – dear Tombeur – is America's equivalent of the (by the Germans required) Kompetenz Katalog about which you spoke in Paper no. 15. And this – the limitative enumeration of powers – is what we have to include in our draft Constitution as a replacement of the principle of subsidiarity that never really worked.

Now back to Philadelphia. Between August 7th-10th, 1787, the Convention discussed the draft federal Constitution, article by article. They spent a lot of time deciding on even the so limitative enumeration of Presidential powers, his relation to Congress and the way in which this relation through instruments such as consent and veto has to be put into procedures. After September 10th a committee started to write a final draft under the leadership of Gouvernor Morris of Pennsylvania. Despite the murmurings of discontent by three delegates opposing the draft, 39 signed it and all present agreed to put it before the Citizens of the States.

With this, in October 1787 began the route to ratification of the Constitution. The primary advocates of the draft benefitted in that period of a clever use of words, in our time better understood as the use of perception as an instrument to convince people. Before and after the Convention of Philadelphia concepts such as 'Confederation' and 'Federation' were used more or less as synonyms. The draft Constitution, however, was put forward under the exclusive name of 'federalist'. As a result the promoters of the 'Articles of Confederation' were called 'confederalists' and thereafter 'anti-federalists'. A negative connotation that has played a role in – eventually – ratifying the Constitution by the people of all thirteen Confederal States. Moreover, gradually a 'federalist' was being identified with the one and true inheritor of the revolution which had realized freedom. To add to this – as an effective aspect of perception – the federalists managed to convince the peoples that with a stable and energetic federal system the United States would prosper, with respect to size, prosperity and politically. This has proven to be a correct estimation.



James Madison, becoming the 4th President of the United States.



Alexander Hamilton, becoming Secretary of State.



John Jay, becoming the first Chief Justice of the United States.

As I have described in previous Papers, Alexander Hamilton, James Madison and John Jay wrote 85 Papers to explain and defend the federal Constitution. The Papers were published in New York newspapers between October 27, 1787 and April 2nd, 1788. Hamilton focused on the need for an energetic government, on the power of Parliament and on matters of the executive and judicial branches. Madison concentrated on explaining the character of the federal system and on the checks and balances between the three branches of power. As stated before, they wrote under the common pseudonym of Publius. Their readers did not know who were behind that pseudonym. It evoked federal and anti-federal oriented articles in newspapers, under pseudonyms such as Brutus, Cato, Centinel, The Federalist Farmer.

In January 1788 the peoples of five States ratified the draft. In May eight, one more to go for the Constitution to come into being. In June 1788 ten States had ratified, more than enough to bring it into force in 1789. Due to this tipping point having been reached, the

remaining three States decided to ratify, despite their earlier opposition to the draft. As of May 1790 all thirteen States had ratified.



Slideshow about the process of federalization in the Confederal America between 1776 and 1790.

Let me return to Verhofstadt's and Cohn-Bendit's call for a Convention such as that of Philadelphia following the 2014 EU elections. I again like to emphasize the necessity for this to take place in 2013, as an ultimate challenge to the intergovernmentalists in the forthcoming 2014 elections. However, a Convention such as the one in Philadelphia does not seem appropriate. To 'imprison' delegates for almost a half year at one location is no longer of this time. Especially in view of the proposal to let federalization emerge from and be ratified by the Citizens of Europe. With the help of social media anno 2013 it is possible to activate the whole of Europe. It is only a matter of organization.

Furthermore, I would like to plead, contrary to the Philadelphia method, that activating European federalists throughout all EU-countries should not have the goal of designing a federal Constitution, but to comment on and improve a draft Constitution, put before the European Citizens. To that end – esteemed Tombeur – it is my view that you and I are obliged to do what Verhofstadt and Cohn-Bendit neglected to do: to shed a clear light on the constitutional and institutional aspects of a federal European Constitution by drafting such a document ourselves. Supported by the American Constitution as a best practice and of course also by the Swiss Constitution. I await your reply on that subject.



Klinkers, October 2012

PAPER 17

In Paper no. 17 Klinkers says – unreservedly – 'yes' in answer to Tombeur's question as to whether a federal Europe should have an elected President. He clarifies his position by referring to the strength of America's system of checks and balances, and by pointing out the failures of parliamentary democracy in many European countries. Formally, these Parliaments may have the last word, but in practice the legislative branch of each parliamentary democracy is strangled by the executive branch. According to Klinkers, the representative democracy could best be served by giving Parliament as well as the President a democratic mandate of their own. Following the thoughts of Frank Ankersmit – with Klinkers member of the Dutch National Convention in 2006, advising on the deficiencies (among others) of the Constitution in the Netherlands – he elaborates on the representative democracy's perils.



David Hume

FAQ 22: Why would it be possible to federalize Europe since this has failed as from 1950, while the number of Euro skeptics and Euro haters increases?
Yes, the paradigm shift is possible. Due to the crisis there is a real possibility to turn around, not only the financial system but the whole EU-system. It suffices to understand what federalism is. Federalism, giving priority to the Citizens instead of the States. Skepticism and resistance against the EU could grow and increase by the intergovernmental system that is operating centralistic and top-down.



FRANK ANKERSMIT

"We can try to change our representative democracy in such a way that it becomes a real democracy. The other possibility is that we decide to reconcile ourselves to the fact that our political systems are in fact aristocracies, to do as a next step everything possible to prevent these aristocracies from degenerating into egoistic oligarchies, controlled by cronyism, nepotism, cooptation and self-enrichment."

PAPER 17

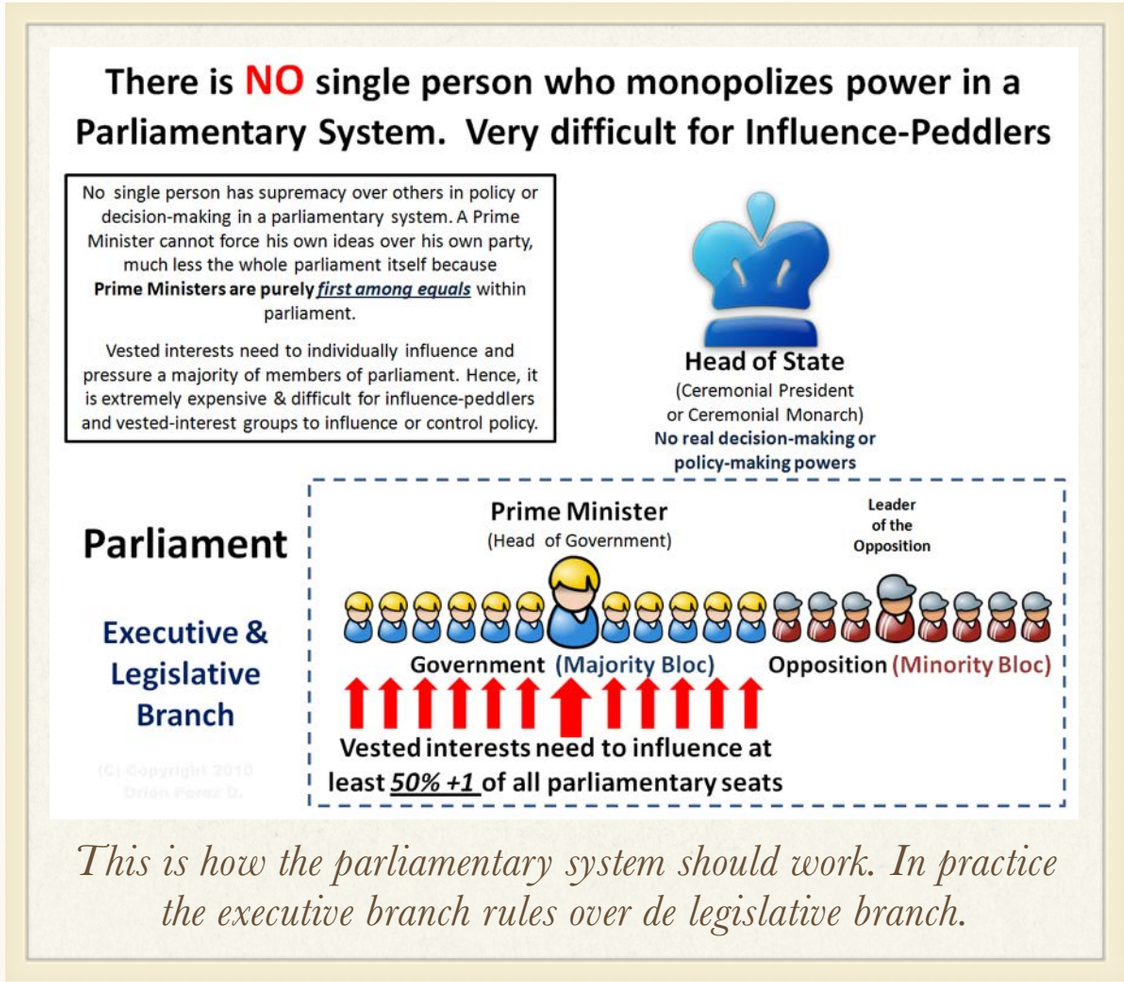
In Paper no. 15 you asked me whether the Presidential right to veto draft laws made by Congress would suit a federal European Constitution as well. My answer was that this right of veto is subject to the fact that the Houses of Congress can overrule a presidential veto with a two thirds majority vote. Thus, that right of veto is by no means a legally based legitimization for dictatorial behavior, as is the case (especially in taking measures to fight the current Euro crisis) within the European Council when one of the Government leaders prioritizes national interests above common European interest.

For a considerable number of years I have been a convinced proponent of a Presidential system. Why? This question can only be answered through the elaboration of three different concepts: that of a parliamentary democracy, a representative democracy and a Presidential system.

Firstly: what is a Presidential system actually? Well, that is easy to explain: the President is elected by the people, as is the House of Repre-

sentatives. Both have a democratic mandate. However, one party is entitled to decide about the matters ranging from a to p and the other party about the matters ranging from q to z. They keep each other in balance through a well-thought system of consent, veto or majority votes. Within the trias politica this is the previously mentioned ingenious system of checks and balances, preventing one of the three branches from ruling structurally over the other. However, there is one disadvantage: the possibility that due to a conflict between Parliament and President a stalemate occurs, for a while. Yet it is preferable to now and again have a stalemate – always solved through negotiations and compromises – above a system in which one of the parties is always the boss, as is the case in a parliamentary democracy. In a presidential system the President is not responsible and accountable before Parliament. Nor vice versa. Both are responsible and accountable before the people. Just as it should be.

Why I am no longer a proponent of parliamentary democracy? Because actual parliamentary democracy no longer corresponds with its formal constitutional description. A parliamentary democracy means that Parliament appoints the Government, which implies that it can send the Government away when it deems this necessary. When we look at parliamentary democracies in European countries we see – to varying degrees – that the legislative branch slowly becomes swallowed up by the executive branch: the executing Government rules, with Parliaments running hopelessly behind them. In all these countries, to varying degrees, a process of departmentalization has taken place; a process of specializing, linked to the administrative agenda of ministries. Thus a process of 'officialization' of parliamentary decision making has taken place. Nowhere do we find the political agenda being determined by the representative body. Through coalition covenants or similar agreements, designed by small groups of people who usually thereafter occupy the executive seats, Parliaments find themselves out-



This is how the parliamentary system should work. In practice the executive branch rules over de legislative branch.

side of the decision-making game, only able to co-govern with Government; or to send the Government away – since it is not possible for Parliament itself to determine and adjust the political

agenda, except when the coalition wants it. The highly praised parliamentary democracy is a pacifier. It does not stand for Parliament, nor for Democracy. The executive power decides, and that is final.

In my view this is contrary to the constitutional goals of a parliamentary democracy. That is why I reject, on the basis of unwritten constitutional law, the legitimacy to rule by coalition covenants. That is a perfidious instrument. A parliamentary majority agrees once on that coalition covenant and then Parliament can go home. The opposition is left desperately searching for holes in the covenant to apply some leverage. In a presidential system, however, a coalition covenant is not necessary. Parliament itself decides on its political agenda, the President executes Parliament's decisions and can execute his own agenda next to that of Parliament – provided that he acts within this specific system of checks and balances controlling the relation between Parliament and the President.

My dissatisfaction with the structural shortcomings of a parliamentary democracy have increased through the years. But I did not see a solution until I had the privilege, in 2006, to become a year-long member of the so-called National Convention of the Netherlands. A group of fourteen people, appointed by the Cabinet, and assigned with, among others, the task of detecting defects in the relations between Government and Parliament. During our debates in the National Convention it was Frank Ankersmit particularly, now emeritus Professor in the Philosophy of History, who denounced mercilessly the deficiencies of ministerial responsibility within the parliamentary democracy. With well-put arguments he demonstrated that this unblessed state of affairs can only be stopped by electing the Prime Minister. Thus granting to this functionary his own set of powers, based on his own legitimization by having a democratic mandate. Ankersmit's reasoning eliminates the shortcomings of a parliamentary democracy, which is formally entitled to hold the Government responsible, but which in fact can be pushed to either side by that Government. Which is why I do not understand that James Kennedy, Professor in History, writes in NRC Handelsblad of November 3rd, 2012, under the title 'Grootmacht drijft lui op de stroom' ('Big power floating lazily on the water'), that in his opinion the federal organization of the USA is outdated in this century. He says, among other things: *"It is no wonder that most democracies in the world have opted for a parliamentary rather than a presidential form of government."* It seems to me unjust praise for parliamentary democracy. For many years this system has not worked.

Larry Siedentop summarized the bankruptcy of parliamentary democracy on the European level in the following words (Knack, December 21st, 2011): *"It began incorrectly with the hasty introduction of direct elections for the European Parliament. These direct elections should have granted the European integration a certain legitimization. (…) But these direct elections for the European Parliament have had the evil result that the national political class, whenever it suits, can dissociate itself from the European project. And that is fateful for both the na-*

tional and European politics. Because today national parliaments possess legitimacy but no power, the European level possesses little legitimacy, but is drawing all powers to itself. For democracy in Europe this can only have severe consequences."

Previous Papers have clarified that the thirteen Confederal States – each in its own way – in the eleven years between their independence in 1776 and the Convention of Philadelphia in 1787 attempted to assume the form and content of a State, both on a constitutional and an institutional level. Consequently, as a result of the lack of one leading motive for all Confederal States, an unworkable amount of different systems arose. Particularly the debates about the concept of 'democracy' – thus about the question 'who is the boss in our State' – created so much unrest within the Confederation that they deemed it wise to organize a Convention which in the end lasted for months. Dozens of fundamental questions were addressed and systematically they were dealt with. With regard to the concept of 'democracy' they decided after much wrangling to adopt the 'Republican form'. In our European terminology: the representative democracy.

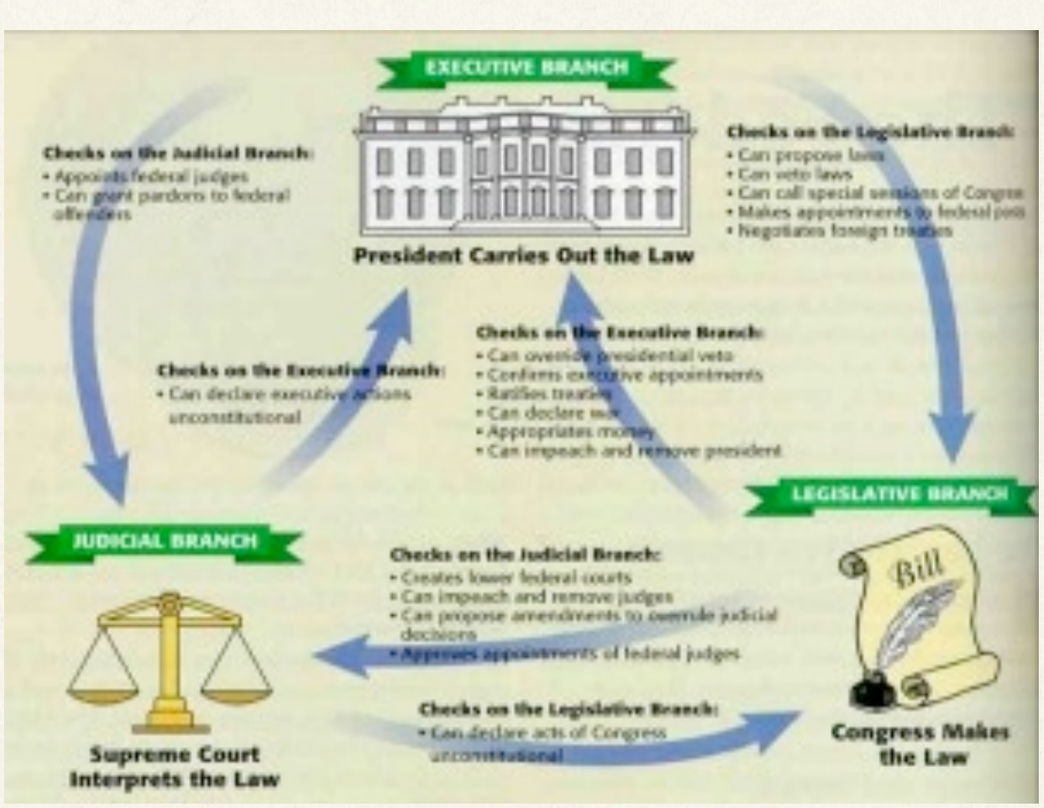
This brings me to the elaboration of the concept of a representative democracy. As Europeans, we tend to identify a representative democracy with a parliamentary democracy. However, they are poles apart. The essence of a parliamentary democracy is that Parliament appoints the members of the executive power and holds them responsible for their execution. Under the representative democracy that we see in the American Constitution this is not the case. In 1787 they opted for a draft Constitution which, at the moment of coming into force next to the system of representative democracy (here: representing the people and the States), boasts a full presidential system. That is why in my opinion the representative democracy of the draft federal European Constitution should not be a parliamentary democracy, but a Presidential system. Thus, a Parliament elected by the people, alongside a President also elected by the people.

Once again, the combination of a representative democracy with a presidential system as well, implies that the two Houses of Parliament, as well as the President, possess their own democratic mandate. The people elect the representatives of the legislative branch, but also the leader of the executive. They stand next to each other. No subordination. Once a year the President unfolds his plans before Parliament and has to ask the consent of (one of the) Houses of Parliament for some of his powers, as enumerated limitative in the Constitution. However, beyond that he can execute his powers as he wishes. Federal parliament cannot demand of him, nor of one of his Ministers, to show up in Parliament in order to be questioned regarding the way in which those powers have been applied.

A Presidential system frees the legislative branch from the stifling grip of the executive branch, which is the case in a parliamentary system. A federal Parliament makes the laws and safeguards there-

fore by itself, thus on its own initiative and with its own sources of information – but within the range of the federally assigned powers – what is good for the whole Federation. Together with his Cabinet, the President has to carry out these laws, but he can make and execute policies on his own account, except for matters requiring the consent of one Chamber. Other than is the case in strict parliamentary democracies the executive branch does not have the means to stifle the legislative branch. The people's representatives do not need to dance to the tune of the executive branch.

The US Presidential System



A second aspect in the context of the democracy concept deserves attention. Strictly speaking, according to political theory, true democracy exists nowhere in the world. How is that?

Previous Papers have sufficiently explained how the classical Westphalen concept of 'sovereignty' controlled the world order between 1648 and 1945. As of 1945 it gradually lost its constitutional significance within several decades. Nowadays no country in the world is in all respects master in its own house, because almost all are member of one or more intergovernmental systems. By virtue of their membership of international organizations – combined with treaty obligations – these organizations may demand of their members to comply with the decisions, taken above their heads. And if they cause trouble, they can be controlled by 'blue helmets', operating under a UN mandate. So much for sovereignty.

Everywhere in the world concepts of sovereignty have been replaced by intergovernmental systems. These systems, however, are stuck between the necessity to cooperate (thus handing in sovereign powers) on the one hand, and a desperate clinging to 'own interests first' on the other hand. That is why intergovernmental systems are intrinsically weak. And that is why the European intergovernmental system is clinically dead. I will not repeat the facts and arguments for this statement, but instead will draw your attention to an aspect of 'democracy' that has been dominating the discussion for years, and which was discussed thoroughly in the Convention of Philadelphia.

Political theorists claim that ‘democracy’ as such does not exist anywhere in the world. The basis for that claim is a simple linguistic matter. In the documents of the ancient philosophers democracy was a contraction of the Greek words ‘demos’ (people) and ‘kratein’ (to rule). Translated, ‘democracy’ means no more and no less than that the people rule. During the French Revolution and the Confederal phase in North America this concept came up in the word ‘popular sovereignty’. One of the primary political theorists of modern times, Jean Jacques Rousseau, is probably the author of that concept.

However, few know that Rousseau – together with other political theorists then and now – indicated clearly that democracy in the sense of popular sovereignty, thus as a mechanism of decision making by the whole people, could not exist. It is organizationally impossible – a conclusion that was also drawn by the members of the Convention of Philadelphia – that a whole community always takes all decisions for that community. This may be feasible in small communities – far away from the world, where it is still customary to decide communally about matters of common interest. However, when a member of such a small community says to his neighbor “I have to go fishing today, otherwise there will be no food tonight, you may vote on my behalf in the communal meeting” the concept of representation arises. What we, for the sake of convenience, call a ‘democracy’ is in the context of political-constitutional principles a ‘representative democracy’.

Well, this has a sour side-effect. Representative democracy is the natural enemy of democracy. Democratic decision-making through representation is no democracy as meant in the context of popular democracy. Therefore the word ‘democracy’ in ‘representative democracy’ is misleading. The essence of democracy is the fact that general decisions (thus decisions taken jointly by everyone) by definition aim at the general interest, even if that decision making would aim at furthering a partial interest. If the whole community takes a decision, actors and interests are identical: they coincide. In the case of popular sovereignty the people are the general interest and the general interests are the people.

This is completely different with respect to a representative democracy. Where democracy – as an evident necessity – has to be organized through representation, actors coincide with groups-interests. In a representative democracy the interests of the group determine the democratic decision making. And since group interests are the natural enemy of general interests, so is representative democracy the natural enemy of democracy in the sense of popular sovereignty.

Of course, the people’s representatives pretend that their decisions aim at furthering the general interest, but that is impossible. How honorable and well-meant their purpose may be, how active and deeply felt their perception of the general interest may be, their decision making is by definition only an interpretation of what they

perceive to be the general interest, because a group or a collection of groups cannot coincide with the general interest.

In his farewell lecture as Professor at the University of Groningen (the Netherlands) on April 12th, 2010, Frank Ankersmit labels the collection of representatives an 'elective aristocracy'. Thus, a group of elected gentility. Ankersmit draws this description from Rousseau. At that time, thus at the end of the 18th century, it was self-evident for Rousseau (champion of popular sovereignty) and for all political theorists after him, that a representation of the people at best could be called an elective aristocracy.



Robert Michels (1876-1936) phrased it as follows:

"The iron law of oligarchy: organization implies the tendency to oligarchy. In every organization, whether it be a political party, a professional union, or any other association of the kind, the aristocratic tendency manifests this very clearly. (….) When democracies have gained a certain state of development, they undergo a gradual transformation, adopting the aristocratic spirit, and in many cases also the aristocratic forms, against which at the outset they struggles do fiercely."

As long as aristocrats honor their name there are no objections. If making decisions for the people necessarily has to be done via representation, one could best be served by aristocrats. Indeed, aristocracy has the connotation of decency, modesty and the presumption of aiming at the general interest, although by definition that is impossible. However, when aristocrats unite in groups, let us call them political parties, and when they, in their undoubtedly sincere endeavor at serving the general interest, try to acquire the post of a representative, they can do this only by promoting the interest of their own group, the political party of which they are a member. Political parties, therefore, are by definition interest-groups who draw their existence and survival from the professional expertise with which they can convince the electorate that their perception of the general interest is best served by opting for that party, and therefore for that interest.

And there begins the problem of a representative democracy. Because it organizes decision making for the people through the medium of interest groups, it is 'oligarchy prone'. By this I mean that within the elective aristocracy the seed of oligarchy is enclosed. Any representative democracy can deteriorate and become a concentration of power in the hands of a few, an oligarchy. In Ankersmit's words: "*We can try to change our representative democracy in such a way that it becomes a real democracy. The other possibility is that we decide to reconcile ourselves to the fact that our political systems are in fact aristocracies, to do as a next step everything possible to prevent these aristocracies from degenerating into egoistic oligarchies, controlled by cronyism, nepotism, co-optation and self-enrichment. All flaws that*

[blossom widely] in our present-day political systems, as is well known to any newspaper reader."

Dear Tombeur, does the European Council – compared by you in Paper 7 to the French Directoire (1795-1799) – not nastily resemble what Ankersmit is explaining here?

The representative democracy, as a mechanism of decision making through channeling group-interests, does not only tend to degenerate into oligarchical threats but is often also serving personal interests. By legitimately acquiring a post within the democracy, unpunished, the wrong people can take the democracy hostage and have it functioning favorably to group and personal interests. They hijack democracy with legitimate instruments and keep it hostage for their own benefit.

In full awareness that the potential for degeneration of the representative democracy into an oligarchy can arise in any democracy, I share Ankersmit's view, and also his reconciliation, that an elective aristocracy is the second-best method of decision making for the people. I quote Ankersmit once more: *"One cannot transform an aristocracy – elective or not – into a democracy, like you cannot make a dog from a cat and vice versa. You should not try it."* These are exactly the same considerations as discussed by the members of the Convention of Philadelphia in 1787, which finally resulted in opting for a representative democracy, seen as the only possibility to take decisions in the interests of the people.



Tombeur, November 2012

PAPER 18

Paper no. 18 elaborates on the failures of some Federal systems. Tombeur describes the rise of the United States of Indonesia, which was quickly followed by its fall. The attempts to create Federations in Africa and Eastern Europe befell the same fate. Tombeur explains the causes of these failures so that they may become lessons for our composition of a Federal Europe.



John Locke

FAQ 23: Why do you choose an American Constitution for Europe?
We do not choose an American Constitution for Europe. In fact the American Constitution is in a sense a European Constitution because that Constitution is completely based on the wisdom of European philosophers and political theorists. It is the merit of the Americans at the end of the 18th century that they recognized the values of the writings of European philosophers and that they were the first in the history of mankind to transform these wisdoms into a practical Constitution. We Europeans were blind to this, all that time. And that is why we have paid such a high price in terms of a never-ending array of wars in Europe.



THOMAS JEFFERSON

"I sincerely believe that banking establishments are more dangerous than standing armies, and that the principle of spending money to be paid by posterity, under the name of funding, is but swindling futurity on a large scale."

PAPER 18

Dear Klinkers, several weeks ago I wrote that the core of Federalism means that the Federation (the whole, the bond), and the federated parts (whatever their name, for instance Member States) each operate separately and parallel to each other. Both levels need their own space for policy making in order to make operating independently possible. Within a Federation this space is mutually guaranteed, while the amount of space may differ from Federation to Federation. This double independence presupposes that the various States take care of their own government for their own citizens and that the Federation makes policies representing the common interest of all citizens of all Member States.

It is a matter of fact that a number of Federations, soon after they were established, failed or disappeared – from Indonesia, African and Asian Federations to European Federations, especially Yugoslavia and Czechoslovakia. Some existing Federations reveal tensions, for instance Belgium and Canada. It is interesting for our project regarding a European Federation to know the causes of these failed Federal constructions, how they dissolved and why these tensions existed. One

can also learn from worst practices. That is why I am going to shed some light on several of these failures, helping us to avoid making the same mistakes in composing a Federal Europe.

Firstly, I would like to outline the story of Federations that did not work, or barely worked. I will give some causal factors for these failures. One failed attempt at creating a Federation will be dealt with more in-depth: Indonesia. In Paper no. 1 you asked me, while briefly describing the lifespan of the United States of Indonesia, if there were more failed Federations. In answer to this I will describe the rise and fall of two European Federations: Yugoslavia and Czechoslovakia. In a separate Paper I will elaborate on the flaws in the construction of the Belgium Federation.

As an example of the first group of Federations – those which were planned and even established but did not work or only functioned for a very limited period of time – I will begin with Indonesia. When in 1945 defeated Japan had to end its occupation of the Dutch colony in East Indonesia, a takeover of power was established by the Indonesian resistance on the Western side of Indonesia, associated with a declaration of independence. Dutch attempts at granting Indonesia self-government by adapting the constitution, while keeping the archipelago within the Kingdom, met time and again with resistance. Several agreements failed to prevent the Netherlands from maintaining power over Indonesia by conducting police actions. At the beginning of 1946 the Netherlands proposed the creation of a Federal state of Indonesia and its establishment was initiated.

However, under international pressure – this was the start of the era during which the principle of self-government was written in capitals worldwide – resistance against the Netherlands increased heavily. In 1949 they organized an Intra-Indonesian Conference. Gathered were the centrally governed Republic of Indonesia – established by the Javanese population under the leadership of Sukarno and his followers – along with fifteen other territories, in an attempt to establish the independent Republic of the United States of Indonesia (RUSI). In December 1949 Dutch sovereignty was le-



Signing of the Treaty of The Hague, birth of the Federation of the United States of Indonesia, lasting only 8 months.

gally transferred to the RUSI. Soon after that several revolts took place, some led by Sukarno. As a result fifteen territories were absorbed by the Republic Indonesia, and thus were lost to the RUSI. Even though there was resistance in Eastern Indonesia against this abdication, the fight between the legally powered RUSI and the non-legal but factually powered, centrally governed Unitarian Republic of Indonesia, led in August 1950 to the dissolving of the RUSI and its total absorption by the Republic.

The question arises, what causes contributed to this failure to successfully federalize?

Following Japan's exit, Indonesia did not have a well-established state-structure. As a result, local elites immediately filled that vacuum by resisting the colonizer and erecting a governing body of their own. This would play an important role when they needed to opt for a unitary state versus Federalism, especially in the western part of Indonesia. They did not consider this to be a choice between two forms of stately organizing but between two political profiles: Federalism was identified as pro-Dutch, thus foreign and colonial; a Unitarian state was regarded as autochthonous, national and modern. On the one hand, Federalism had negative connotations: it was associated with an externally imposed form of social living and with the chaos that would threaten territorial integrity, because national identity was fragile due to the large diversity of local and regional cultures. The Republican elite considered these cultures as primitive and feudal, the national identity as modern. On the other hand, there was the association of the Unitarian Republic with the recovered independence, thus with emancipation, which meant that the people favored a Republic.

In other words, Federalism would increase the internal and external threats for the new State and the Unitarian state would decrease those threats by creating unity and stability. The RUSI was not founded on an established and democratic system, nor on a plural society. Moreover, the provisional Federal Constitution stated that representatives of each Member State would not be elected by the people but appointed by the respective governments – of which a majority was against the Federation. This implied that indirectly they established in fact an intergovernmental system that was hostile to a vertical division of power, thus against Federalism. Furthermore, the planned Federation revealed some inequality – it would be (in professional jargon) socially and politically asymmetric: almost half of the Indonesian people consist of Javanese (ca. 42%). In a Federation they could only lose power.

To finalize this case, I would like to quote from the contribution of Thomas Goumeno in the book 'Defunct Federalisms', a quote that clearly explains the nucleus of the Indonesian story: *"The Indonesian case supports the relevance of the hypotheses which claims that if federalism is externally imposed and lacks consolidated democratic institutions, it is likely to fail. In the Indonesian case, failure was also assisted by the absence of a coherent constitutional framework and the power asymmetry between the Republic and the other federal units."*

This story is not unique. Similar attempts at establishing a Federation on the initiative, or at least the active cooperation, of the former colonizer took place in the first two decades following World War II, only to fail quickly for the same reasons. This happened in Africa with Cameroon and Rhodesia-Nyasaland. Federal Ethiopia-Eritrea also failed, despite intervention by the recently created United Nations. In Pakistan-Bengalen the Britons left the 'Government of India Act' with Federal characteristics; that Act became the provisional Constitution. Nevertheless, Pakistan centralized its government without British interference.

What do we learn from these failed attempts at creating a Federation? First of all that externally or top-down imposed Federalism does not work. Certain conditions need to be fulfilled. First there have to be common values and interests as a driving factor for creating a Federation. It is also necessary that political representation is legitimate and that the preparedness to cooperate and demonstrate solidarity is mutual, especially when the Federation encompasses different groups of the population. In all the aforementioned cases two or more of these conditions were lacking.

Back now to Europe, to two Federations that disappeared after a while. One ended in violence, Yugoslavia, the other through political consensus, Czechoslovakia.

The first Constitution of the new Yugoslavia in 1946 was a copy of the Soviet Constitution, except that the Yugoslavian Member States did not have the right to establish an army or follow their own foreign policy. Yugoslavia was built on three levels: the Federal level, the Republican and the administrative level. After Yugoslavia detached itself from the Soviet Union in 1948, it began to combine Communism with Federalism: the ideology had to support Federalism as well as the State, through the basic principle of territorial organization. More specifically, the practice of economic self-government was introduced and furthered by new Constitutions (1953, 1963 and 1974): the Federation became a society of 'producers' rather than a society of nationalities. Thus self-government on the level of business units became the essential characteristic of the Federation. Self-control penetrated all forms of public life. As a result, power moved from the center to the periphery, the federated republics.

One of the political leaders promoting the system of self-control, the Slovakian Edvard Kardelj, stated that the Federal government no longer had independent power above society, nor its own identity in society, but increasingly became an instrument of a society organized by self-control. The Communist government remained firmly upright, although stronger in the Member States than within the Federal Government. The institutional anchoring of Federalism was rejected. The Federation lost its constitutional basis and existed only through the policy of the Communist Party and the People's Army. Next to that Josip Broz, 'Tito', continued to pro-



On January 31st 1946, the new constitution of the Socialist Federal Republic of Yugoslavia, modeled after the Soviet Union, established six republics, an autonomous province, and an autonomous district that were part of Socialist Republic Serbia. The federal capital was Belgrade.

mote the organic identity as Yugoslavian, which would be a symbiosis of Republican (member state) identity and a bond with the Yugoslavian state-community. However, local and regional control became stronger and the feeling of Yugoslavian kinship grew weaker.

During the 1980s, after Tito's death, the process of defederalization increased speed. The Republican elites were only interested in their own member state, even at the cost of the other Republics and the Federation. They increasingly became competitors.

The Yugoslavian Republic collapsed soon after the implosion of the Soviet Union and the East Block, although this may have been only a provocation, not the real cause. Violence between the Yugoslavian Republics erupted due to their borders not coinciding with the various ethnic groups.

In a previous Paper I mentioned the Dutch proposal to change the Republican (and other) internal borders of Yugoslavia. This was rejected by the other EU-countries. In my view a capital mistake, which led to thousands of deaths in Yugoslavia; the conflict endures to the present day, not only in the hearts and minds of the people, but also in the policies and structures, for instance in the artificial State of Bosnia-Herzegovina. That State exists thanks to the occupation and guardianship of the international community. I wonder why before and after the war in Yugoslavia not one European politician stepped forward to organize a political Balkan-Conference.

How can this failure be explained? For the sake of the relevance to Europe I confine myself to the following elements. First, it is noticeable that there was no coherence between political practice and the

organization of the State: Federal institutions were there only to support the party programs, not for developing solutions for conflicts. When a conflict arose, it was dealt with by external powers. The Constitution aimed more at creating an ideal order – which never came – than at dealing with the political situation in Yugoslavia. Everything was concentrated on maximizing power, not on constructing a State that would provide solutions for conflicts in the long term. The following sentence from the contribution by Matt MacCullock and Silvia Susnjic in the book 'Defunct Federalisms' summarizes the explanation of the Yugoslavian drama in a nutshell: *"In this respect, the case of Yugoslavia seems to suggest that it is both the imposition of federalism compounded by the failure to devise a single conceptualization for the ideational framework of the state that contributed to the eventual collapse of the federal project."*

What do we learn from this? That Federalism requires both a constitutional and an institutional organization, at least formulating a clear division of power between the Federal body and the powers of the Member States; and a regulation to deal with conflicts. The Yugoslavian Constitution lacked these agreements, despite its four hundred articles. Moreover, the Federal level was undermined by the exclusive organization of self-control on a level below the Federal level. Thus there was no chance for the Federal level to develop integrating dynamics on a national level.

Czechoslovakia formally became a Federation in 1969. By law, the country was divided into two socialist Republics. Each Republic boasted its own parliament (national council) and a government; for the whole country a Federal parliament (Assembly) came into being, consisting of two Chambers and a Federal executive branch. However, the most important political power was unchangeably divided between a Czechoslovakian Communist Party and a Slovakian Communist Party. The first was in charge of taking the primary decisions with respect to law-making and policy-execution.



In 1968-1969, Czechoslovakia was turned into a federation of the Czech Socialist Republic and Slovak Socialist Republic. However, the centralised political control by the Czechoslovak Communist Party severely limited the effects of federalization, eventually leading to splitting up the two member states in separate countries.

As of 1969 the lifestyle and values of all inhabitants became comparable, despite their national identity. This had to do with a considerable mobility between both communities: based on a research in 1990 57% of the Slovakian population declared that they had

Czech friends, 31% Czech-kinships, while the Czech declared that 23% had Slovakian friends and 45% kinships. Around that time, after the fall of the Berlin Wall in 1989, Czechoslovakia for the first time became both a Federation and a democracy.

Notwithstanding this picture of a rather integrated society, the result of the 1992 elections strengthened two non-comparable views about the organization of a State. These visions were supported by the largest party of each community, both equally strong. What was the unbridgeable difference between both visions? The primary difference was the matter of whether the Federation was built from the bottom up or top down. The first opinion implied that the constitutive, federated parts of the country delegated some of their powers upwards to the Federation. The second opinion implied that the Federation delegated some powers downwards to the Member Parts. The Slovakian leader Vladimir Meciar defended the first opinion, claiming sovereignty for the Member Parts in a communal State. The Czech leader Václav Klaus could not accept this point of view; in his opinion it was a hybrid system. Immediately he distanced himself from Federalism and began to talk with Meciar about dividing the country into two parts. On January 1st, 1993 the federal Czechoslovakia ceased to exist and transformed into two States.

Thus far we have heard the facts. Again we have to face some questions about the causes of this failing Federation.

The first thesis is that Federalism as a State model was repeatedly used not as a goal in itself, but as an instrument for political purposes which had nothing to do with the right of self-government by the citizens. Even though it appeared on several occasions that they considered the concept of Federalization important, the instrumental application of Federalism led to half-hearted policy measures. Obstacles for streamlining a layered identity were attacked only politically, not institutionally, and were therefore only occasionally solved, temporarily. Thus, tensions by and perceptions of Federal defects remained in place. Apparently, their approach was hindered by the fundamental myths – stories about founding the nation, an old story for the Czechs, a recent one for the Slovakians; the Czechs saw the Slovaks as 'younger brothers' who had to be inaugurated, thus patronized. These myths stood in the way of developing a Federal identity. The different histories of both communities, although not antagonistic to each other – enmity existed between Slovakians and Hungarians – led to the perception of inequality between each state. This mutual perception of being unequal only increased with the establishment of the State: the Czechs did not see a difference between their own identity and the Czechoslovakian nationality, the Slovakians did. But also the asymmetric organization of the Federation fueled this feeling of inequality: the Slovakians were dealt with differently, at first politically during the Communist regime, with their own party, afterwards institutionally; according to the Czechs these were privileges; however, the Slovakians did not perceive them as such.

Again this is a case where we have to conclude that Federalism has not been applied as a goal in itself for the sake of creating added value for federating groups, but as an instrument to achieve other political goals. This may have also been the cause of this failure. The institutionally unequal treatment of both communities may have played a role as well, namely the establishment of a Federation – necessary according to the Slovakians but superfluous according to the Czechs – thus in their perception a privilege for the Slovakians. Thirdly there was no regulation, as had been the case in Yugoslavia, for solving conflicts; probably because both countries were ruled under dictatorial one-party regimes. Such a ruling was considered superfluous, as in the first and only place the Communist party represented the State. Finally, the sudden openness and unique emancipation of political life in Czechoslovakia, a situation that both communities had never encountered before, may have contributed to the break-up of the country into two separate states. A process of democratization that entailed that the restraint attitude towards changing political borders was released in this case, contrary to the conservative attitude with respect to borders that can be noticed elsewhere in the world.

In short, both communities would not have envisaged in these circumstances that the Federal identity could be a chance for a moral, cultural and political upgrading of their respective national identities. The assessment of that added value would not necessarily be the same for each community. Communities can indeed have different reasons for creating a Federation. However, a communal insight in the added value of Federalism is necessary.

Jan Ruzicka and Kamilla Stullerova articulate very well the failure of Federalism when it is being used as a means and not as a goal in itself. They state in 'Defunct Federalisms' – a matter that not only applies to the case of Czechoslovakia but also to the other aforementioned cases, and to Belgium, about which I will write a the next Paper: *"The instrumental function of Czechoslovak federalism, as identified in this chapter, is precisely a case of federalism that was, time and again, used as the means towards other political ends. It was never understood as a good in its own right."*

This case, and others, appear to show that the success of Federalism depends on the clarity in which it describes its contribution to political freedom, democratic responsibility, economic competitiveness, as well as cultural richness. To clarify this added value, apparently a sufficiently long period of debate is needed. I cannot stress this aspect firmly enough: creating a Federation requires a public, widely supported debate in society. Maybe public conferences and referenda about a European Federation should be organized. What do you think about that, dear Klinkers?

Let us ponder - while looking at this statue, raised in the municipality of Vaassen in the Netherlands in October 2006 - on the strange way in which history deals with Declarations of Independence, the basic cry for liberty. The statue resembles the arrival of about 12.500 Moluccans, military men and their families, around 1951 in the Netherlands. They had to leave the Republic of Indonesia for fighting within the Dutch army against 'rebelling' Indonesian troops, who were no longer 'rebels' after the Treaty of The Hague in December 1949. However, once in the Netherlands they had to endure a decades-long episode of ill performed administrative and social management. Which led in the seventies to revolting movements by young Moluccans, among which an assault on the residence of the Indonesian ambassador and the hijacking of a school and a train. Causing some casualties.

The Netherlands' Declaration of Independence of 1581 - on March 24th 2014 admired by President Barack Obama in the Rijksmuseum in Amsterdam since this declaration inspired the American Declaration of Independence in 1776 - prolonged the already 20 years existing war with Spain with another 60 years. That war ended by the often in these Papers mentioned Peace of Westphalia (1648), the birth of the concept of the nation states. However, 80 years of war to get freedom is quite a long time. It took the American colonies only a few years to accomplish their own independence, though they had to fight for it as well.

In 1945 Sukarno and Hatta declared Indonesia independent from the Netherlands. Ignoring their own freedom fight in the 16th and 17th century this was not recognized by the Dutch. Thus leading to five years of hostilities and fighting until the Treaty of The Hague in December 1949. And then the Moluccan tragedy began. Due to the fact that Sukarno tore the Treaty of The Hague into small pieces, immediately after the signing of the Treaty - because his aim was a centralized Republic of Indonesia, blowing up the Federation of the United States of Indonesia of which the Moluccans were part of its South-Eastern sovereign member state - the Moluccans themselves issued their own Declaration of Independence on April 25th 1950. Which was not recognized by Sukarno, ignoring his own freedom fight. Thus leading to a bloody guerrilla war, ending by the execution of the Moluccan leader Dr. Chris Soumokil on April 12th 1966.

Meanwhile the USA had stumbled into the Vietnam war. Though Ho Chi Min presented in 1945 the Vietnamese Declaration of Independence with a thorough reference to Thomas Jefferson's Declaration in 1776, and despite the fact that Ho - having lived in the USA - repeatedly begged the USA for helping Vietnam to get free from France, Vietnam got after France's defeat in Dien Bien Phu (1954) a long lasting bloody war instead.

Of course, these typical war-reactions against Declarations of Independence can easily be explained by national and geopolitical fears and interests. The question though is: can national and geopolitical-driven explanations also serve as excuses for fiercely opposing to whatever kind of Declaration of Independence, while the opposing states themselves won their freedom by fighting for it?

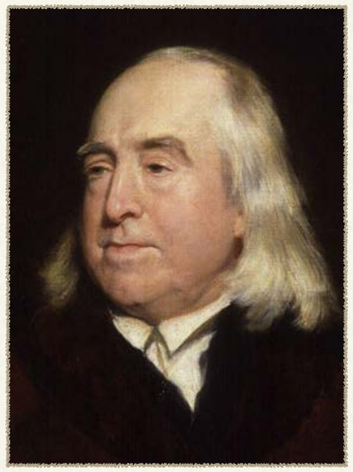


And, as far as the Moluccans are concerned: doesn't history owe them either becoming a free Moluccan Republic, or a restoration of the Federation of the United States of Indonesia, with the Moluccans as one of its sovereign member states?

Tombeur, December 2012

PAPER 19

In Paper no. 19 Tombeur makes a thorough analysis of the shortcomings of the Belgian Federation. He explains in which respects the construction of that Federation differs from the classical Federal characteristics. Furthermore he indicates that several aspects of the Belgian Constitution should be changed and that Article 35 should be activated in order to turn it into a real, classical Federation. This case demonstrates what we need to learn before composing a Federal European Constitution.



Jeremy Bentham

FAQ 24: What does your Constitution have which makes it a strong and applicable foundation for a European Federation? Our Constitution contains only universal principles of democracy and federalism. In only ten articles. Its compactness makes it suitable for any assembly of countries wishing to cooperate federally without losing their sovereignty and to all improve from it. Just as '1 + 1 = 2' is a formula that can be applied in any country of the world, whatever the language or culture. Everybody understands such a compact, clear and general formulated text. This Constitution is in any case the opposite of the Treaty of Lisbon with its very many appendixes and amendments, which no one can understand and which is even not workable for the technocrats themselves.



KAREL DE GUCHT

"Belgium is a permanent diplomatic conference."

PAPER 19

Well, now I have reached the moment to elaborate on the constructional flaws within an existing Federation. You, Klinkers, would say 'systemic' errors impeding its operation, or even paralyzing it, although without terminating the Federation. Flaws that should be avoided.

I confine myself to the Belgian Federation – enough has been said about the tensions relating to the Francophone state of Québec in Federal Canada. I also do not wish to again discuss the concept of cultural diversity. I would like to focus on the operation of two of the three branches – the legislative and the executive – and the component parts of the Federation. In doing so, I will demonstrate some structural deviations of the concept of 'Federalism' – a curious matter if one understands the classical characteristics of a Federation. However, the cause of these deviations has to be sought in the political arena. In his book 'Franstaligen tegen Vlamingen. Hoe België als natie mislukte' (The Francophones against the Flemish. How Belgium failed to become a nation) Paul van Velthoven explains meticulously that sources of political conflict within the Belgian unitary state did

not stop after its transformation into a Federal state; they continued smoldering within the new model of the state.

In a classical Federation the Federal Parliament consists of two Chambers. One Chamber relies on the Member States, thus emphasizing the equality of sovereignty of the Member States, despite their differences. That is why each Member State possesses the same type of powers. Usually this Chamber is called the Senate. The other Chamber is of the citizens, the inhabitants of the Federation. Logically, both Chambers operate as a whole because their members represent the Federation as a whole. In no way may they be fragmented on the basis of any criteria. That would be an attack on their essential function, namely to represent the Federation as a whole. The same applies to the Federal executive power.

Well, in Belgium (according to Article 43 of the Constitution) the members of both Chambers of Federal Parliament are divided with respect to language – a Dutch and a Francophone group: thus there is indeed fragmentation. To agree on legislation, each group has to reach a majority quorum, besides a two thirds majority in the plenary session. In addition, both language groups follow their own procedures to suspend or block a normal majority in the plenary session: one language group can state that there is a conflict of interests and can thus even force the abdication of Parliament. One language group can ring the so-called 'alarm bell'; this almost occurred a few times and actually happened on one occasion, each time initiated by the Francophone group.

These double majorities and blocking minorities are a negation of the Federal concept – once again, by definition a real Federal Parliament represents the Federal whole, the bond that stands for the whole country. In that context fragmentation in the sense of decision making by different groups in Parliament is out of the question. A Federal Parliament must rely on common values and interests within the Federation and not on the diversity of its component parts. At most, there can be an organized 'shared rule'; in other words: the right of co-deciding on the separate representa-

Belgian Constitution

Article 1 [Federal State]

Belgium is a Federal State made up of Communities and Regions.

Article 43 [Linguistic Groups]

(1) For cases determined by the Constitution, the elected members of each House are divided into a French linguistic group and a Dutch linguistic group, in the manner determined by law.

(2) The senators referred to in Article 67 (1)(2,4,7) make up the French linguistic group of the Senate. The senators referred to in Article 67 (1)(1,3,6), make up the Dutch linguistic group of the Senate.

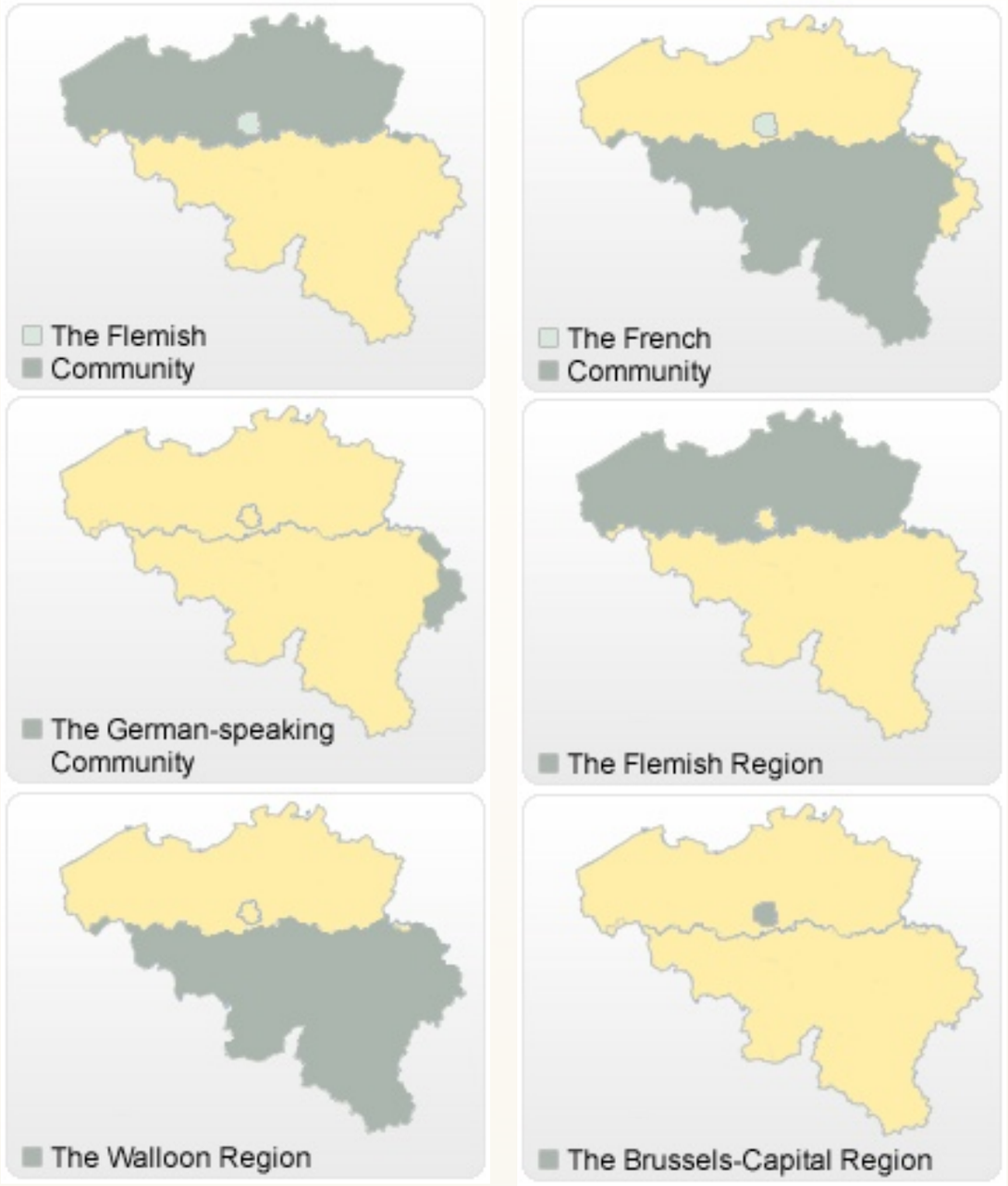
Article 43 is not conform the standards and principles of federal law making.

tion of the citizens of the whole Federation and of the Member States.

In Belgium this infringement of Federalism has led to a laborious functioning or even a jamming of the decision-making process, for instance in sensitive political matters such as the borders of a Member State or constituency.

The same applies to an executive Federal Government: it has to represent the whole and should not consist of representatives of specific groups of society. Society's diversity should not be recognized in a Federal Government: it has to be one and indivisible. Nevertheless, things have been organized differently in Belgium. The executive Government is composed of an equal number of Flemish and Francophone Ministers. The Prime Minister may be appointed from any language group (Article 99 of the Constitution). The Federal Constitution itself dictates the composition of members of Government along the lines of the different language groups. This constitutionally imposed ministerial parity demonstrates the bi-communautarian nature and not the Federal nature of the Federal Government. In other words, an organized contradiction. Curious for a Federation, but nevertheless true.

Any composition and operating on the Federal level representing society's diversity affects the Federal institutions' reason for existence. The result of this lack of consistent Federalism is – in Belgium for instance – that one cultural community is able to block the other and therefore the whole governing system. If one Minister resigns in Belgium this is sufficient to disrupt the language balance, which in turn puts a complete stop to governing.



Belgium is organized federally in name only. Therefore it is stuck in an institutional trap. One could speak of a confederal contamination of the Federation. But that is not all: there is no country-wide Federal constituency. There are nine constituencies, one per (single-language) province. The only bi-lingual constituency is in the Brussels Region and in a part of the province of North-Brabant. Thus it is not surprising that since 1978 there have been no more Federal bilingual or trilingual political parties. This means that since then the Belgian 'politeia' (to use a Greek word) has disappeared – the country no longer possesses a political community, not even one ideological group. As a consequence, Federal Parliament and Government possess only a legitimate mandate on the level of the component parts of the State, not on the Federal level.

In other words, formally speaking, Belgium is a Federation, but politically the country operates like a Confederation. In the words of the Belgian Euro Commissioner Karel de Gucht: *"Belgium is a permanent diplomatic conference."*

How to deal with this hybrid system that provokes confrontations between linguistic and cultural communities, thus leading to political deadlocks? It is obvious that the fragmentation of the Federal Parliament and Government should be lifted, inter alia through a revision of the Articles 43 and 99 of the Constitution.

However, there are more impediments hindering the operation of the Belgian Federation. There are six Member States, but of two kinds: three communities and three regions. Worldwide, this is unique for a Federation, I think. In what way the component parts of the Belgian Federation perform, I will leave aside because describing those Federated bodies and the way in which they operate does not add anything to the lessons we should learn from the flaws in the application of Federalism.

For some years Flemish parties talk of creating a Confederation. But watch out, this use of the word 'Confederation' is misleading. It is far from the purpose of these politicians to split the country into a Flemish and a Wallonian State – which would also make the position of Brussels questionable. Rather, they mean something completely different when they strive for Confederalism: activating Article 35 of the Constitution. This article states that one could decide to grant the Federal level a limitative enumerated set of powers – see the text of Article 35 at the end of this paper. This would be a revolution with respect to the division of powers: at this moment the six Member States possess their own specific powers and leave 'the rest' to the Federal level. Article 35 is actually the basis of the yet to be created Federal State, in which the Federal level possesses limitative enumerated powers, leaving all other powers to the Member States: a vertical division of powers as the nucleus of Federalism. Due to the fact that the application of Article 35 has been postponed indefinitely we should conclude that the Belgian Federation is not yet a fully grown Federation.

When Flemish politicians speak of striving for a Confederation they always mislead the French- and German-speaking inhabitants. Because those citizens interpret these observations as a purpose to split the country into the completely autonomous little countries of Wallonia and Flanders. That is patently not their aim. Therefore it would be good for everyone in Belgium if they would use the appropriate concepts; the wrong use of words damages communication and decision-making.

What can I conclude about the Belgian Federation? Like in Czechoslovakia the Belgian Federal system does not demonstrate unity, but rather consists of two poles: the Wallonian and the Flemish pole. We find this polarization in all institutions and their respective decision-making procedures. One should not be surprised about any latent or manifest antagonism between the two large communities. In fact it controls the operation of the entire State-system. This system does not leave much, if any, room for taking care of the communal, Federal, matters. As a result, the added value of the Federal level has not yet been achieved. The moral of this story is: on the Federal Belgian level there should be only Belgians, no Flemish, nor Wallonians, nor Brusselians; likewise on the European level there should only be Europeans.

This cultural bipolar situation in a country can undermine the Federal level. Institutionalizing that bipolar nature up until the Federal level has contributed to dissolving Federal Czechoslovakia and is still contributing to the laborious operation of the Belgian Federation.

Now that we have dealt in this and the previous Paper with failed or deficient Federations I would like to look at what we should learn from this. It is indeed clear that building a Federation and sustaining it requires that certain conditions are met. The cases I have dealt with teach us that federalism:

- cannot be imposed externally or top-down;
- should be a goal in itself and no means to achieve other goals;
- presupposes converging values and balanced interests;
- requires a representative democracy and tolerance of pluralism;
- needs political room and organization to cover communal matters;
- needs institutions to cooperate structurally and to solve conflicts.

Esteemed Klinkers, let me – before finalizing this Paper – discuss the aspect of the number of members of a Federation, required to prevent failure of the intended European Federation. You plead in Papers 12 and 13 to start European Federalization gently and on a small-scale, with only the three Member States of the Benelux. The goal would be that these three countries leave the Treaty of Lisbon individually in order to re-enter that Treaty as a Federation. Like Guy Verhofstadt, we foresee that it will be necessary for Europe to

temporarily adopt the intergovernmental system next to a Federal organization. Around ten years ago I called these two intertwined organizations an ‘inter-federation’.

However, creating a threefold Benelux Federation seems to me too weak to grow into a full European Federation. Such a Benelux Federation starts with a tremendous mortgage. Its composition of three Member States brings with it the risk that the Chamber representing these States will push their national agendas in an organized way. Thus this organization will deteriorate into an intergovernmental system. Because the Chamber of the States, in which the three States have an equal and limited number of votes (for instance 3 x 2) threatens to vote along the lines of the State’s own interests. This risk is hardly avoidable in a three-state Federation.

An alternative composition of the Benelux Federation is possible although daring: it would be necessary to divide Belgium and the Netherlands into a larger number of Member States, next to the single Member State of Luxembourg. Thus, one could establish in both countries, along the provincial borders, ten or more Member States of the Benelux Federation. Or maybe better – to recognize societal importance and administrative continuity, a subject stressed by Larry Siedentop in his ‘Democracy in Europe’ – create the borders of new Member States along the lines of the old duchies and counties, taking into account the age-old division between the two States and the balance between the Member States. But let me put this aside for now.

Creating a European Federation with such a small number, the three Benelux countries, would be just another intergovernmental system. In addition, to have so few States in a European Federation seems to me not right for its survival. The fewer the members of a Federation, the less influence it will have, within and outside of Europe. A Federal Western Europe, for instance, is in my view insufficient, because it will be too weak on the continent and beyond. I aim higher and advocate a European Federation that will eventually cover the entire continent. I agree with you, Klinkers, to start small. The coercion of the principle of unanimity among the 17 or 27 EU-Member States should indeed be avoided. Also because it is now time to act: the social-economic crisis in Southern Europe is deepening and the EU is on the verge of dissolving. Thus the States that are prepared to create a Federation, the countries of the Eurozone first, should start, with the support of their citizens, building a European Federation from the bottom up, as soon as possible.

Also in this respect it seems necessary for Europe that we learn from historical best practice. The Convention of Philadelphia stated in Article VII of the draft Federal Constitution that this document would come into force upon the ratification by citizens of nine of the thirteen Confederal States. Thus, a majority vote. No unanimity requirement. A daring step and also a curious one, because it has become one of the solid aspects of Federalization that all involved States have to agree with the creation or adjustment of the Federal system. Moreover: it was also a breach of the ‘Articles

of Confederation', the treaty of the Confederation. Nevertheless, the delegates of the Convention dared to carry out this unorthodox deed.

Following this daring step of the founding fathers of the American Constitution, in 1848 followed by Switzerland, I propose that we, in our draft federal Constitution for Europe, also apply the principle of majority voting. Strictly speaking, our Federal thinking regards only the seventeen countries of the Eurozone. We leave aside the other ten EU-countries without the euro currency. If we want to bring a majority of the seventeen Eurozone countries into a Federal organization the number nine is also applicable here. A minimum majority of nine States against the other eight. When the citizens of nine Eurozone countries accept the Federal Constitution, in my view it should come into force.

If one would like to criticize the formula of nine States and my way of reasoning, for a further legitimization of my standpoint I would like to refer to the Treaty of Lisbon. You and I do not have any respect for that Treaty. But let us not forget – I already referred to this in Paper no. 7 – that Article 20 of the Treaty concerning the European Union (one of the two treaties of the Treaty of Lisbon) and Articles 326-334 of the Treaty concerning the working of the European Union (the other treaty of the Treaty of Lisbon) present a perfect foundation for taking the step towards Federalization through a 'nine-majority-vote'. This cannot conflict with the goals of the European Union, on the contrary. Article 20, section 2 states that a minimum of nine Member States is allowed to begin closer or so-called strengthened cooperation, using the institutes of the European Union as well.

Well, see here the legal legitimacy to pour that strengthened cooperation into the shape of a Federation. To start a Federation with nine countries also diminishes the complexity of the operation of all countries in the context of two organizations (the intergovernmental and the Federal one). The Federation of nine countries also offers more legal security, both for the citizens within the Federation and for those staying outside. Moreover, the aforementioned articles of the Treaty of Lisbon offer another legitimization for Federalization: suppose that the Eurozone will be enlarged, then nine ratifying States would no longer constitute a majority. However, looking at these articles, in that case even a minority vote would legitimize the ratification of a Federal Constitution.

Thus, if you do not object, in the following Papers we start working together on drafting a Federal European Constitution, based on the American Constitution, including a majority vote for its ratification, using the aforementioned articles of the Treaty of Lisbon as its legal legitimization. With one eye on the Swiss Constitution.

ARTICLE 35 OF THE BELGIAN CONSTITUTION		
1.De federale overheid is slechts bevoegd voor de aangelegenheden die de Grondwet en de wetten, krachtens de Grondwet zelf uitgevaardigd, haar uitdrukkelijk toekennen.	1.L'autorité fédérale n'a de compétences que dans les matières que lui attribuent formellement la Constitution et les lois portées en vertu de la Constitution même.	1.Die Föderalbehörde ist für nichts anderes zuständig als für die Angelegenheiten, die die Verfassung und die aufgrund der Verfassung selbst ergangenen Gesetze ihr ausdrücklich zuweisen.
2.De gemeenschappen of de gewesten zijn, ieder wat hem betreft, bevoegd voor de overige aangelegenheden onder de voorwaarden en op de wijze bepaald door de wet. Deze wet moet worden aangenomen met de meerderheid bepaald in artikel 4, laatste lid.	2.Les communautés ou les régions, chacune pour ce qui la concerne, sont compétentes pour les autres matières, dans les conditions et selon les modalités fixées par la loi. Cette loi doit être adoptée à la majorité prévue à l'article 4, dernier alinéa.	2.Die Gemeinschaften oder die Regionen, jede für ihren Bereich, sind gemass den durch Gesetz festgelegten Bedingungen und Modalitäten für die anderen Angelegenheiten zuständig. Dieses Gesetz muss mit der in Artikel 4 letzter Absatz bestimmten Mehrheit angenommen werden.
Overgangsbepaling	*Disposition transitoire*	*Ubergangsbestimmung*
3.De wet bedoeld in het tweede lid bepaalt de dag waarop dit artikel in werking treedt. Deze dag kan niet voorafgaan aan de dag waarop het nieuw in titel III van de Grondwet in te voegen artikel in werking treedt dat de exclusieve bevoegdheden van de federale overheid bepaalt.	3.La loi visée à l'alinéa 2 détermine la date à laquelle le présent article entre en vigueur. Cette date ne peut pas être antérieure à la date d'entrée en vigueur du nouvel article à insérer au titre III de la Constitution, déterminant les compétences exclusives de l'autorité fédérale.	3.Das in Absatz 2 erwahnte Gesetz legt das Datum fest, an dem dieser Artikel in Kraft tritt. Dieses Datum darf nicht vor dem Datum des Inkrafttretens des in Titel III der Verfassung einzufügenden neuen Artikels liegen, der die ausschliesslichen Zuständigkeiten der Föderalbehörde festlegt.

English version:

1.The federal Government only has the powers for the subjects explicitly enumerated in the Constitution and the laws.

2.The communities or the regions each have the powers for all other subjects, under the conditions and procedures as determined by law. That law has to be accepted by a majority as mentioned in Article 4, final section.

3.The law, mentioned in section 2, determines the day of the enforcement of this article. This day cannot precede the day on which the new Title III of the Constitution, containing the exclusive powers of the Federal Government, comes into force.

Tombeur, January 2013

PAPER 20

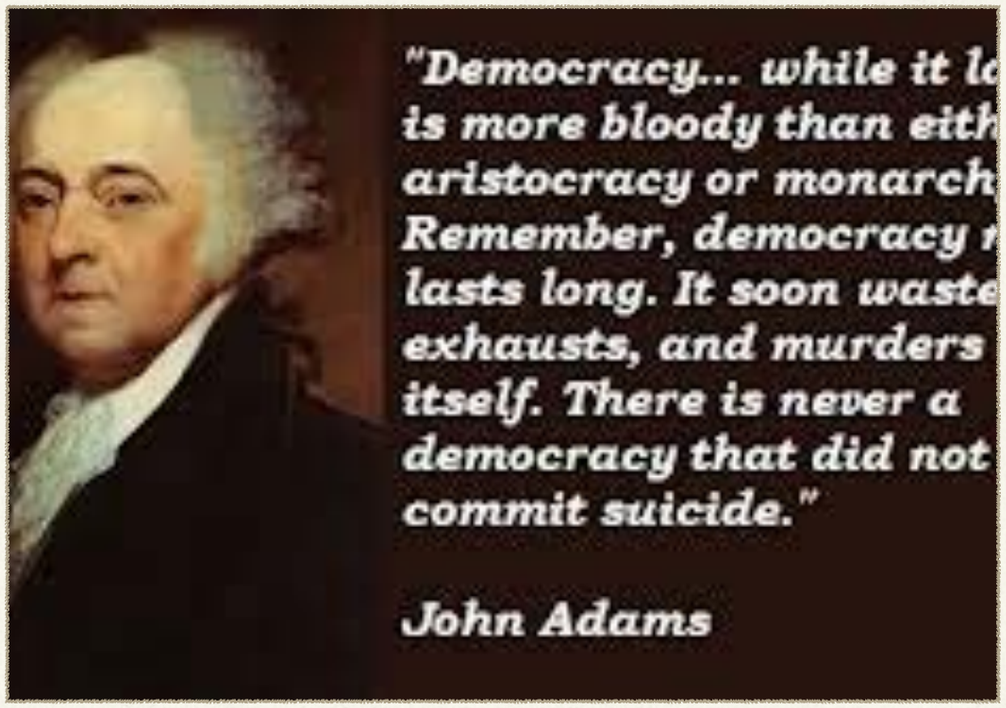
Paper no. 20 contains an analysis of the Swiss federal system. The creation of the Swiss State began as a loosely connected association of independent governments, evolving into a treaty-based Confederation, to become a Federation in 1848, based on a Constitution. Characteristic of this federal system is the fact that the Member States – the so-called Cantons – play an important role in the federal decision-making process and in the implementation of decisions. Besides that, the Cantons and the people as a whole determine federal policy through the instruments of a direct democracy: through referenda and people-initiatives they influence the decision-making process of the federal powers, including the introduction of amendments in the federal Constitution – all by majority voting. Tombeur carefully presents what aspects of this Federation are useful within the constitutional and institutional building that Klinkers and Tombeur are erecting for the European Federation in the following Papers.



Alexis de Tocqueville

FAQ 25: What are these universal principles in your federal Constitution?

These are: a) a vertical division of powers (Kompetenz Katalog), b) a horizontal division of powers (trias politica), c) checks and balances (equilibrium between the branches and between the federal body and the member states when they need each other), d) dualism (parliament and president have their own democratic mandate), e) bill of rights, f) the federation is of the citizens), g) mutual rights and duties between the states and between the federal body, states and citizens. That is all there is. This has proven to be sufficient to unite 50 states in America. Who dares to say that this would not be applicable to Europe is talking nonsense. The United States of America and other large Federations have proven the contrary, for many decades.



JOHN QUINCY ADAMS

"I must study politics and war that my sons may have liberty to study mathematics and philosophy. My sons ought to study mathematics and philosophy, geography, natural history, naval architecture, navigation, commerce, and agriculture, in order to give their children a right to study painting, poetry, music, architecture, statuary, tapestry, and porcelain."

Before I – as promised – will elaborate on the Swiss Federation, I have to say that I cannot reside in the elected oligarchy or elective aristocracy as described by you in Paper no. 17 through the words of Frank Ankersmit – systems that are democratic in name only. It seems to me that the picture Ankersmit paints of the political situation in Western Europe is even too rosy. In a large number of European countries this oligarchy has created an almost unreachable group of power brokers, in other words: the oligarchy has become a closed-shop elite. Too much decision-making power in too few hands, supported by an army of officials controlling European society increasingly through the means of a technocratic bureaucracy. This is the widespread democratic deficit of the West; a dangerous path has been chosen.

Resigning ourselves to this democratic deficit? That verb is not in my dictionary. But how can we fight this elective aristocracy, or an even worse form of oligarchy?

By creating a counterforce. For instance by establishing forms of direct democracy, besides the powers of the representative body, Parliament. Because society makes its own governmental shapes; when a governing power wants to control society from the top-down, society will assess this and will either accept it or not. If not, society will resist one way or another, openly or underground – to eventually win, always. Thus European society is resisting – at present – the over-regulating urge of Europe's elite, busy maximizing its powers with the 'requirement for more integration' as an arbitrary excuse. With direct democracy as one of the answers to fight the democratic deficit the Swiss polity comes into sight.

Switzerland reveals that a direct democracy – with referenda and peoples-initiatives, besides the legislative powers – is quite feasible. I quote – in a free translation, underlined in places by me – Jean-François Aubert from his 'Droit constitutionnel suisse', published on the occasion of the latest general revision of the Swiss Constitution (1999): *"All constitutions organize the State (with a parliament, a government and courts and their respective powers). Even democracy can be seen as part of the stately organization: the political rights of the citizens are based on a statute that is comparable to the basic rights; similarly, they have to be complied with and protected. But the electorate is also an organ of the State, the highest of them all, and the rules of organization in constitutions apply therefore to the definition of 'citizens' and to the enumeration of their powers, elections, referenda and peoples-initiatives."*

Switzerland proves that mixing a representative and a direct democracy works well. In my opinion it seems the most appropriate State system, at least up until a certain scale of government. The cooperation of the people in the political decision-making process is – of course – easiest on the local level, the level of the local authorities. In this respect the Swiss model completely fulfils Althusius' basic thinking: creating a State starts from the bottom-up, by the individual citizen and groups of citizens.

This formula approaches closely the concept of 'self-government': citizens governing themselves as a condition for freedom, dixit Clinton Rossiter in his Foreword to the Federalist Papers in the 1961 edition. A very urgent matter, it seems to me, for most European countries. Even a European Federation alone will not change the citizens' mistrust of public authorities of all kinds, festering for many years now, as revealed by the Eurobarometer and other polls. Hence, this well-thought formula of 'self-government'. It should start on the local level, because that is where most citizen's affections lie, both socially and materially.

Within higher levels of government the mixed system of decision-making is more difficult or even impossible, due to the magnitude of the electorate. However, to block an oligarchy also on those levels other methods do exist: by prohibiting an accumulation of political mandates and establishing incompatibilities, by confining mandates to a limited period of time, by reserving legislative powers to Parliament without decision-making powers for the Govern-

ment, and by electing judges by institutions other than the executive.

American Congress is not only the legislative power in name, but also in reality. I liked your exposé in Paper no. 17, esteemed Klinkers, about the presidential system of the U.S.A., where the President has no right of initiative in the field of law-making, nor has he the final word with respect to legislating: his right to veto a parliamentary draft-law may be overruled by a large majority in Parliament. This is the so-called second reading of a draft. Federal Government and their advisers, under the leadership of the President, can never impose their will on Parliament – a sad way of acting that is, however, widespread in Europe: the legislative power has literally become a 'non-power' and is therefore chasing the Government because they want 'to govern' as well, for instance by asking masses of questions and endlessly discussing the governments' policy with Ministers, mostly without any tangible result.

I would like to recall that Switzerland has been a Federation since 1848 – after the brief civil war (the Sonderbundkrieg). Nevertheless it keeps calling itself 'Confederatio Helvetica' in order to avoid a debate about changing its name, this being a politically sensitive matter in some Cantons. Article 1 of the Constitution states: *"The Swiss people and the Cantons (followed by their names) form the Swiss Confederation."* Still I do prefer the term 'Federation'. This combination – the Swiss citizens and the Cantons, the Member States together – indicates that Switzerland is a Federation.

Once again, in a Federation the Member States do not disappear, as has been argued so many times by others. On the contrary. A Federation consists of States and of a 'higher' governing body operating on the basis of a limitative set of powers. In this respect, Article 53 of the Swiss Constitution is important, together with the first article. That article determines what I stated in Paper no. 5 with regard to the classical form of Federalism: 1st the guarantee of sustained existence, the statute and the territory of the Member States, the Cantons; 2nd submitting any change in the number of Cantons or in their statutes to the electorate of all Cantons and to the Swiss electorate; and 3rd submitting any change of the Canto-



The Confederation is the name used in Switzerland for the federal state. There are three powers: the executive (the Federal Council), the legislature (the Federal Assembly) and the judiciary (the Federal Supreme Court).

nal territory to the concerned electorates and Cantons, followed by the federal Assembly. Also the federal Constitution guarantees the Cantonal Constitutions, provided that they do not conflict with federal law; it also protects the constitutional order of the Cantons (Articles 51 and 52). Later I will describe the strength of this bond.

Let me now – after this brief description of the federal organization of Switzerland – begin with the horizontal division of powers: the trias politica.

Legislative power lies with the federal Assembly ('Bundesversammlung', 'l'Assemblée fédérale'), consisting of two Chambers: the People's Chamber ('Nationalrat', 'Conseil national') and the States Chamber ('Ständerat', 'Conseil des Etats'). The executive power lies with a federal Council ('Bundesrat', 'le Conseil fédéral'). This system is curious and maybe unique. It contains parliamentary as well as presidential characteristics: on the one hand both powers (Parliament and Government) exist independently from each other while on the other hand – though there is a division between law making and governance, including implementation and enforcement – there is cooperation of, and even interference between both powers.

Government, the federal Council, consists of seven people (one vote each) and should be geographically and linguistically representative. It is appointed for four years by Parliament, the federal Assembly. Parliament cannot send the Government home (Articles 174-177). Nor does Government step down if it is embarrassed by the electorate after a referendum. If the Governments' policy is not accepted by the people they stay in their posts and adjust the policy.

Both Chambers of the federal Parliament are elected for four years in Cantonal constituencies (Articles 148-155). The Swiss electoral system resembles the Belgian one; as a result there are no or hardly any national political parties. Federal Parliament cannot be dissolved by Government. The members of Parliament and Government, as well as those of the federal Court, are individually independent; their mandates are incompatible (Article 144). Parliament controls the federal Government and its administration (Article 169).

On the other hand both State institutions depend on each other to a large extent, thus their own independent operation is limited: their powers and tasks, also those of the federal Court, are spread throughout the institutes. Both have the right of initiative (legislation) and they cooperate in establishing laws (Articles 163-165 & 181-182). The distribution of tasks is so complicated that one institute cannot monopolize the execution of the main tasks: each federal institute is forced to cooperate with others, even with the national federal electorate and the Cantons.

Moreover, the political agenda is not only directed by the informal consultation of Cantons, parties and professional associations, but also by the formal peoples initiatives from groups, that at any moment may submit – to the national electorate and to the federal Assembly – proposals to changing the Constitution completely or in part (Articles 138-139b). Even if only one out of ten of these initiatives is accepted, such peoples initiatives influence the policy of governing bodies.

Typical for Switzerland and important for a federal Europe is the fact that the national or the Cantonal electorates, as highest organs of the State, have to interfere. National referenda are mandatory for any change made to the Constitution. A free translation of Article 140 of the Constitution is clear in this respect: *"Mandatory referendum – 1. Subject to the result of the voting by the people and the Cantons are: a. revisions of the Constitution; b. accessing organizations for collective security or supranational communities; c. the as urgent declared federal laws without constitutional basis, which have to be in force for over one year; these laws need to be voted upon within one year as of their acceptance by the federal Assembly. 2. Subject to the voting of the people are: a. peoples initiatives aiming at a complete revision of the Constitution; b. peoples initiatives aiming at a partial revision of the Constitution and which were rejected by the federal Assembly; c. the principle of a complete revision of the Constitution in case of conflict between the two Councils."*

Besides that, there is the possibility of facultative referenda on the national level about federal laws, regulations or international agreements, on the initiative of a certain number of voters or Cantons (Articles 141-141). I won't touch upon these referenda in this context.

In short, just like in most other States the three functions of the State are spread among the three classical branches, thus a horizontal division of power. Characteristic for the Swiss branches, however, is the constitutional instruction to cooperate. Their mutual cooperation is a clear goal of the Constitution. Sometimes the Court has to intervene in this cooperation. Switzerland has combined the parliamentary system with the presidential system.

The Assembly is not only legislator number one, but also qualified to appoint federal judges (Article 168) and to settle conflicts of qualifications between authorities, violations of Cantonal constitutions, the legal status of federal peoples initiatives et cetera (Article 173). On the federal level the Assembly has residuary powers; it carries out tasks that are not assigned to other federal institutes. Federal Government's main mandate – besides legislative tasks – is the implementation of federal policies and taking care of relations between the Federation and the Cantons (Articles 180-187).

The federal judges are elected by the federal Assembly. The federal Court assures ultimately, after interference by the Cantonal courts,

the uniform application of laws that transcend the Cantonal jurisdiction; it settles conflicts between the Federation and the Cantons and between the Cantons (Articles 188-189, 1-3). The Court is entitled to be legally creative. However, it is not possible to dispute decisions by federal Parliament and Government, unless in cases described by law (Article 189, 4). The Constitution does not have the clause that the Court can control the compliance with the constitutional division of powers by the federal bodies. In that sense the federal Court is not a constitutional Court.

In what way should we look at this from a federal European point of view?

There is indeed an advantage to a European Government collectively elected by the two Chambers of a European Parliament, whereby one Chamber is elected in one European constituency. However, the complicated division of powers between the three Swiss branches, even more complicated due to the possible intervention of the electorate and the Member States, seems to me inappropriate for the Federation Europe. I fear that a continuous cooperation between federal institutes, further burdened by the interventions of the Cantons and the electorate, will lead to inertia and impasses. Such a system would perpetuate the present operation of the European Union, resulting in a democratic deficit. We must leave the present EU-system behind, in the opinion of a growing number of citizens across Europe.

Thus, I would like to opt for a presidential system in the sense that President and Parliament possess clearly distinct powers, comparable to the American model. This horizontal division of powers between the European trias politica has to be written down in its entirety in a Constitution along the lines of the American one. Whether the President with or without (a part of) the federal Government should be elected directly by the European citizens or by European Parliament is a matter to decide upon later, esteemed Klinkers.

There is an obvious need to establish a Supreme Court to safeguard the uniform compliance with federal legislation. This Court should also have the power to ensure compliance with the constitutional division of powers as is the case in other Federations, with the exception of the federal Court in Switzerland. I also plead for the creation of federal courts in States or in groups of States, acting as courts in first instance; for example, one federal court within the three Benelux States. To ensure a uniform legal practice and equal legal treatment, the national courts of the States should not have the power to handle federal law, unless after having consulted prejudicially a federal court or the Supreme Court. Their decision should be binding for the State courts. Furthermore, I would like to give the power to appoint the federal judges and judges of the Supreme Court to the European Parliament, and to no one else, following the Swiss example. Why? To guarantee their independence from the executive power and to acquire the trust of the institution which made the laws that they, the judges, have to uphold.

Now I will address the vertical division of powers in Switzerland: between the 26 Cantons (including six half Cantons) and the federal body.

As an introduction to this division of powers, so characteristic of Federations, I would like to draw attention to the fact that the approval of the first (and later) federal Constitution in 1848 has been equal to the process that was followed to create the American Constitution. The texts of the Constitution are accepted, not unanimously but by a majority vote; on the national level as well as on the Cantonal level.

With pleasure I quote, again in a free translation, Augustin Macheret, who writes in 'Droit constitutionnel suisse' (2001) about the approval of the Swiss Constitutions: *"Always looking for consensus, this pragmatism does not question the legitimacy of the Constitution if only a limited number of voters (36%) and even the rejection by some Cantons occur. Looking at the three Swiss Constitutions since 1848 the number of Cantons and half Cantons that rejected all draft Constitutions have increased in such a way that at present six Cantons and half Cantons did not accept any draft of the three Constitutions. In 1848 eight Cantons did not approve, in 1874 ten and in 1999 twelve."*

Nevertheless, all Cantons remain within the Federation, even those rejecting adaptations of the Constitution. This proves to be the strength of this Federation. It is not based on a Treaty that can only be altered unanimously, but on a Constitution of the Member States and citizens. A Constitution which can be adapted by a majority vote, and not by unanimity, through a dictatorial veto right. The minority accepts the outcome of the majority vote. Macheret concludes with an impressive quote from 'La Suisse et l'Europe' by Jacques Freymond: *"Indeed, the Swiss have the absolute duty to express their wish to live together, which elevates the acceptance of diversity as the condition for unity."*

Diversity as a condition for Swiss unity! This is completely different from the outdated story elsewhere in Europe about diversity as an obstacle to a European Federation.

For European federalists this is something to ponder. Because it proves what I have said, accompanied by André Glucksmann: differences do not necessarily hinder federal unity; on the contrary, they even further that unity. How? By externally driven forces.

This has been the case in Alpine Central-Europe with its three (in 1291) and now about twenty rather small communities that wish to maintain their democratic independence and protect themselves against larger neighboring countries. With geography as their ally, they have succeeded in this. Thomas Fleiner and Alexander Misic in 'Verfassungsrecht der Schweiz' (2001) put it as follows: *"For ages these little communities have turned away from the stately development of their neighbors in order to maintain their democratic independence.*

Thus, 26 little communities have closed their ties at the border of three large linguistic territories in Western Europe, in order to preserve their political and cultural independence from their mighty neighbors. Each of these communities could develop its legal status, political and religious culture and historic independence while nevertheless being connected with the culture of neighboring countries. (…) This paradox of unity in diversity summarizes the federal principle and is the starting point of several theories on federalism."

What used to apply to Switzerland is nowadays applicable to Europe, in this 21st century multipolar world, an era that is more and more controlled by (sub)continental forces. Will Europe accept the challenge or will it keep wandering around in its nation-state and popular-nationalistic arena? By only living in the past, Europe will not acquire a place of its own in this rising multipolar world that is increasingly controlled by large, multicultural Federations.

Well, now I will elaborate on the vertical division of powers.

The principle here is that the Swiss Federation possesses only sovereign powers (Article 3) and is only empowered to undertake tasks as determined in the Constitution (Articles 42 and 47). That is the classical model of a Federation built bottom-up.

The powers of the Swiss Federation are softened in two ways. Firstly, its powers are restricted by the federal obligation that Cantons have to cooperate in federal law-making (Article 45, 1) and the obligation to consult Cantons whenever their interests are at stake (Article 45, 2). Secondly, they are softened by the principle of subsidiarity whith respect to public duties. Article 5a reads: "Subsidiarité – L'attribution et l'accomplissement des tâches étatiques se fondent sur le principe de subsidiarité." This principle means that the federal body is carrying out tasks transcending the Cantonal means or requiring uniform legislation (Article 43a, 1). On the other hand, the Federation has the power to generalize agreements between Cantons (convenants) or even to force some Cantons into taking part in those convenants.

Finally, the Constitution demands vertical cooperation and support. The Federation and the Cantons assist each other in the fulfillment of their tasks; they work together and are duty-bound to support each other administratively and judicially (Article 44, 1 and 2).

To keep this complicated system operational, federal legislation has priority when it collides with Cantonal legislation (Article 49). This priority is not only necessary to safeguard the Federation's unity, but also for the citizen's legal security. In this, Switzerland has been inspired by the American Constitution.

To avoid a detailed description of this complicated system I confine myself to an enumeration of the sovereign powers of the Swiss federal body:

- Public safety, defense and civil protection (Articles 57-61).
- Vocational education, permanent education, scientific research, innovation, sports and movies (Articles 61a-72).
- Environmental protection, water policy, forest management, heritage, hunting, fishery and animal protection (Articles 73-80).
- Infrastructure, traffic and transport, traffic taxes, railways, transport by air, water and space (Articles 81-88).
- Renewable energy, nuclear energy, transport of energy, mail, telecom and media (Articles 89-93).
- Economy, competition, consumer protection, banks, insurance, currency, foreign economic policy, supplies, economic structure policy, agriculture, production and trade in alcohol, gambling, ammunition and weapons (Articles 94-107).
- Housing, labor, social security, public health and genetics (Articles 108-120).
- Migration policies (Article 121).
- Civil and penal law (Articles 122-125).

In addition, the federal body also possesses fiscal powers. I leave them aside for the sake of brevity.

To finalize the description of federal powers I would like to mention two, in my view important conditions.

First of all Article 161 is remarkable. It reads as follows: *"Interdiction des mandats impératifs – 1. Les membres de l'Assemblée fédérale votent sans instructions. - 2. Ils rendent publics les liens qu'ils ont avec des groupes d'intérêts."* This means that each member of each Chamber of federal Parliament has an individual mandate to take care of the general interests of the whole Federation. Dear Klinkers, we have to remember this when we start drafting our version of a European Constitution.

Secondly, I would like to mention that the Swiss Federation is organized 'functionally', comparable to the German and Austrian Federation (see Paper no. 5): according to the Constitution, federal laws are carried out by the Cantons (Article 46). Once more, in Switzerland the federal and the non-federal bodies are complementary to and depend on one another. As I have stated in Paper no. 15, it seems to me that this 'functional' type of Federation is not quite suitable to Europe. It is preferable to adopt the so-called 'institutional' type, allowing for both levels of government (the level of the Federation and that of the States) to operate as independently as possible from each other – which should not prevent them from cooperating voluntarily if deemed necessary.

To conclude my presentation of the Swiss constitutional system I will briefly deal with its official multilingualism. The Swiss Constitution guarantees linguistic freedom of all citizens (Article 18),

Swiss Constitution

Article 18 Freedom of Language

The freedom of language is guaranteed.

Article 70 Languages

(1) The official languages of the Federation are German, French, and Italian. In communication with persons of Romansh language, the Romansh is also an official language.

(2) The Cantons designate their official languages. In order to preserve harmony between linguistic communities, they respect the traditional territorial distribution of languages, and consider the indigenous linguistic minorities.

(3) The Federation and the Cantons further communication and exchange between linguistic communities.

(4) The Federation supports the plurilingual Cantons in the fufillment of their particular tasks.

(5) The Federation supports the measures taken by the Cantons of Grisons and Ticino to maintain and to promote Romansh and Italian.

This may serve as an example that a federal state does not need one language. It also contradicts political parties who demand that every immigrant should speak the language of the hosting country

while also determining that the Federation has four official languages: German, French, Italian and Raeto-Roman. Relations between the Federation and the citizens or the Cantons are carried out in the first three languages; Raeto-Roman is used for people who speak this as their mother tongue (Article 70, 1); it is not used within federal public offices or in federal law-making.

Who dares to say that a powerful Federation needs one homogeneous people with one language?

The Cantons themselves decide on their official languages, taking into account the established linguistic territories and the interests of language minorities (Article 70, 2). They also apply their own linguistic statutes when carrying out federal policies. The Federation and the Cantons support each other in this multilingualism (Article 70, 3-5).

In court cases they use the language chosen by the litigating parties. Federal courts' judges use the language that is used in the decision that has been attacked. In Cantonal procedures the administrators are obliged to use the official language of their administration.

In summary, the equal treatment of the four national languages is safeguarded and is effectively used in the relations between the federal body and the citizens. Besides that, maintaining the stabil-

ity of the historically developed linguistic territories is a goal. Research shows that knowledge of other languages is limited. The constitutional goal of the federal body and the Cantons to further multilinguism is not superfluous.

What should we learn from this Swiss governmental system for Europe? Which constitutional aspects should we adopt in a European Federation, and which not?

With respect to the horizontal division of powers I can be brief. The Swiss system seems to me too complicated to be effective in a European Federation of nine of more States, later over thirty. It is preferable to opt for a bicameral system with one Chamber for the citizens and one for the States. Even so I prefer a presidential system for the Federation, not a parliamentary democracy. The division of the power to legislate on the one hand and to execute that legislation on the other has to be formulated clearly in a federal European Constitution.

I would like to retain the EU Court of Justice, although transformed into a Constitutional Court. That federal Supreme Court should be entitled to control the compliance of the constitutional division of powers, contrary to the federal Supreme Court in Switzerland. It seems to me that the members of the federal European Supreme Court should be appointed by the federal European Parliament. That Parliament itself should be elected on the basis of one, all-encompassing European constituency, in order to create a European 'politeia'. This should lead to trans-European political parties.

The individual mandates within the three branches should not be compatible: one person should be member of one institution only. The mandates are to be carried out independently, thus without interference of the States or other institutions. These two principles contributing to functional independence – and thus responsibility – should in my view be included in clear words in the European Constitution.

Multilinguism within the European government is also evident: there may be more than four languages as working languages. Relations between the federal body and the citizens or the States can be handled in the same or in different languages, according to the Constitutions and federal laws, comparable to the way the Swiss deal with the Raeto-Roman language.

My proposal for typical federal characteristics would be:

- Safeguarding the existence and diversity of the States and the composition of the Federation.
- A classical vertical division of powers, thus a limitative enumeration of powers (a 'Kompetenz Katalog', as the Germans say).

- Guaranteeing individual independence of the members of Parliament, Government and Courts.
- Cooperation between the Federation and the States.
- Guaranteeing autarkic governance of the Federation and the States. For instance in the domain of taxes.
- Majority voting, never by unanimity, on the level of the Federation and that of the States with regard to adaptations in the Constitution.
- With respect to conflicts: priority to federal laws.

Let us – esteemed Klinkers – incorporate the useful parts of the American and Swiss Constitutions in our draft of a federal European Constitution, in addition to some specific European ingredients.

Katern

The Swiss Federation can be depicted as follows:

Classical. It is a bottom-up Federation, evolved from a Confederation, with limitative enumerated powers, thus all other or residual powers belong to the Cantons.

Competitively and teleologically oriented. The division of powers is subordinated to the needs of society, while the question 'who is in charge?' is dealt with according to the principle of subsidiarity.

Functional. The Cantons carry out federal laws. Moreover, sometimes they have to approve of federal decisions or should be consulted about them.

Intergovernmental. The level of the Federation and that of the States are largely interdependent and therefore need to cooperate.

Autarkic. Both levels have incomes, also from fiscal sources.

Majority vote. Striving for a large majority or even consensus, but no voting by unanimity.

Klinkers & Tombeur, January 2013

PAPER 21

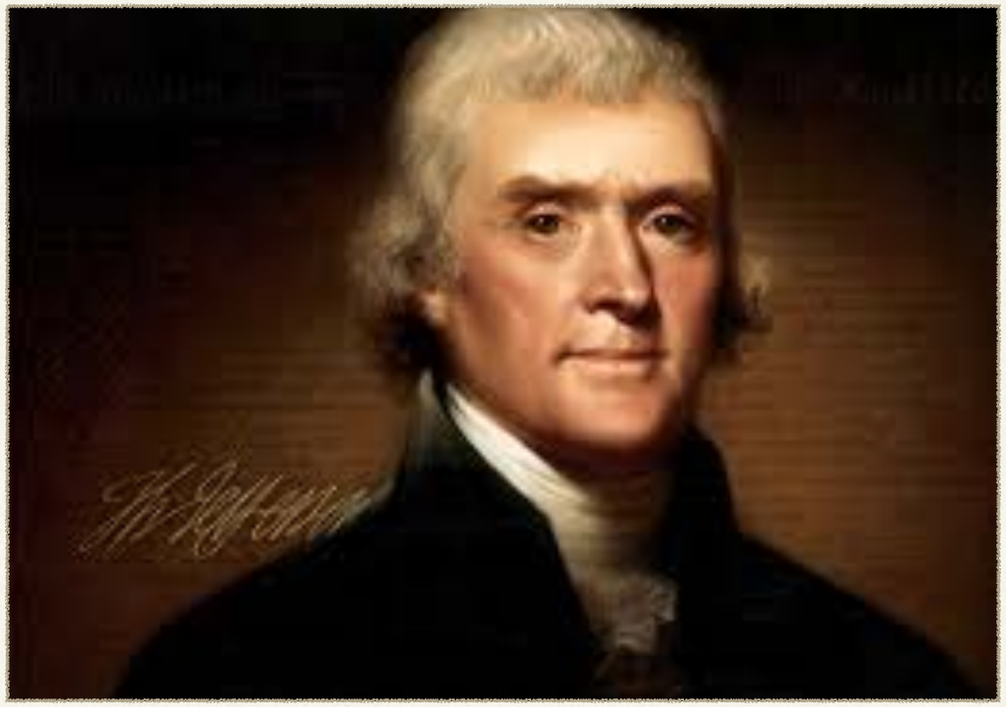
In Papers no. 1-20 we have explained a) why the intergovernmental EU-system is destroying the goal of cooperation for European interests; b) why a federal system would be preferable for Europe; c) that Europe should thus federalize; d) that federalization through an adjustment of the present EU-treaties has always failed and why it will never succeed; e) that European federalists should therefore design a federal Constitution themselves, as was done in America at the end of the 18th century; and f) what constitutional and institutional conditions have to be met in order to prevent the intended federalization from failing due to constitutional construction errors. In the following Papers no. 21-24 we will put forward a federal Constitution for Europe. This draft is based on the 1789 American Constitution, strengthened with elements from the Swiss Constitution and tailored to present-day Europe. Paper no. 21 is dedicated to the Preamble and Article I of the European Constitution.



Jean-Jacques Rousseau

FAQ 26: How did you arrive at a Constitution of only ten articles?

The 1787 U.S. Constitution boasts only seven articles; 27 amendments were added to that Constitution. We have incorporated some of these amendments into our Constitution. Furthermore, we have improved the structure of the seven U.S. articles by dividing articles so that they can be better understood. We have also incorporated elements of the Swiss Constitution. That is why our Constitution contains ten articles.



THOMAS JEFFERSON

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the Pursuit of Happiness."

Our version of a draft Constitution for a European Federation is intended to include at least the three Benelux countries and six other countries of the Eurozone. For the record, the 17 countries of the Eurozone are as follows: Austria, Belgium, Cyprus, Germany, Estonia, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Slovakia and Spain.

The final Article of our draft European Constitution determines that the Federation will come into effect as soon as the citizens of the three Benelux countries and of six other countries accept this Constitution. The citizens of those nine countries allow the Constitution to come into force. In this way we follow the same method as applied in America in 1787-1788, when the draft Constitution was submitted to the citizens of the thirteen Confederal States of America: if nine of the thirteen did accept the draft, the federal Constitution would come into force. Thus the founding fathers explicitly did not opt for the requirement of unanimity among the thirteen States involved. The Convention 'stepped out of the box' of the Confederal Treaty, thus creating

the possibility of designing radically new legislation: a federal Constitution instead of an adjusted confederal Treaty.

In Paper no. 19 we explained why we also opt for the number of countries required for ratifying the Constitution as nine: the Treaty of Lisbon itself indicates that a minimum of nine Member States has the right to organize a strengthened form of cooperation.

Would it be difficult to unite nine countries into a European Federation? We do not know. Change starts with oneself. Over the past hundred years the Benelux countries have proved that they can change. As of 1920 they began cooperating with neighbouring countries, after which this cooperation led to the Oslo-group, in order to draw, in 1944, a structural path for cooperation on a European level, a path that was gradually broadened to include many other countries. The pre-federal European Community, followed by the Union, began with only six Member States.

The other Eurozone countries must decide for themselves whether they wish to continue fighting in the context of their nationalistic-driven decision making. The Benelux countries should not spend any more time on that – nor France, Germany or Italy, countries that in 1950-1951, together with the Benelux, established the European Coal and Steel Community (ECSC). In the words of the aforementioned André Glucksmann, in answer to the question of whether Europe should continue searching for a new challenge:

"This would not be hard to find if the Union were not running around like a headless chicken. It began in the early 1950s with the erection of the European Coal and Steel Community (ECSC) connecting the heavy industry of Lotharingen and the Ruhr Region."

He points out the necessity of a revival by the same countries that in the 1950s lit the European community-fire.

Glucksmann makes it clear that committing to a new challenge is no free choice, as can be seen from the following two quotes:

- *"Merkel and Hollande think and act on the rhythm of elections and polls."* This is a variation on the observation made by Jean-Claude Juncker, mentioned in the Foreword, that European politicians know very well what they should do, but if they did so they would lose the next elections. And therefore they remain passive, at best insufficiently active.

- *"The different European players may not be waging war, but they are far from being benign towards each other. Europe should be aware of danger in this anarchistic jumble. Poetin's Russia creates a threat. The bureaucratic slave-state of China creates a threat. The militant Islam creates a threat. Europe has to learn again to think in terms of friends and foes."* This observation corresponds with the third driving force for a federal Europe as described by Tombeur in Paper no. 9.

With observations of this kind Glucksmann makes it clear that the salvation for European cooperation lies in action, courage, passion, stepping out of the current domineering way of thinking. That was done by the French thinker Montesquieu in the first half of the 18th century. It has also been done, soon after Montesquieu, by the federalists in America, in full awareness of the fact that thinking from the Citizens rather than thinking from the States would be the compass for walking a successful path. If those people were able, at that time, to make this leap in thinking, then we also must be able to do this now.

Federalizing Europe is only feasible by stepping out of the box of the Treaty of Lisbon (just like the founding fathers did with the 'Articles of Confederation') in order to create something completely new. The motto is: *"If you continue doing today what you have been doing yesterday, then tomorrow you will get the same results as you scored today. If you are not satisfied with the todays results, then you must change today. Only then you will get other results tomorrow."*

Therefore, as is the case with the American and Swiss Constitution, our draft of a federal European Constitution begins directly from the perspective of the Citizens. Since our Preamble is derived from the American and Swiss Constitutions we quote them both.

The American Preamble consists of one sentence:

"We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."



The Swiss Constitution also begins with a short Preamble. It declares in the name of God why the people and the Cantons establish the Constitution. In a free translation the Swiss Preamble states:

"… being aware of their responsibility before the Creation, they are determined to renew their bond in order to strengthen liberty, democracy, inde-

pendence and peace, in the spirit of solidarity and openness to the world, destined to experience their diversity with respect for the other and in equality, in awareness of the joint realizations and of their plight to take responsibility for the coming generations, knowing that only he is free who uses that freedom and that the power of society is devoted to further the well-being of its weakest members, establish the Constitution ..."

The Swiss Constitution itself goes even further: in Article 2 it describes the goal of the Swiss Federation, namely to protect the freedom and the rights of the people and to safeguard the country's independence and security, as well as to further the prosperity of the community, sustainable development, the country's internal cohesion and cultural diversity.

We also see these ancient principles and established concepts from both Constitutions in the answer of the German filmmaker Ulrich Seidl, author of the trilogy 'Paradies', to the question (in a recent interview with the Belgian newspaper De Standaard) as to what, in his opinion, 'paradise' entails: "My idea of paradise is vague. But there must be freedom and dignity. Otherwise you cannot even begin to speak of paradise." We agree: first of all paradise requires freedom and safety in order to achieve a better society.

However, we realize the controversial character of opening the Constitution with a Preamble. It is not customary for each State to have a Preamble preceding the Articles. In the Netherlands there has been a longstanding debate as to whether the Constitution should open with a Preamble. This debate is always controlled by an agitated discourse between advocates and opponents of references to a Supreme Being in such a Preamble. And between those who favour and those who reject mentioning the Royal Family in that text.

For us this debate is very simple. The best practices of the quoted Preambles guide us. First of all, to have a Preamble is a matter of law-making doctrine. A law should open with at least a Consideration explaining why the law maker deems it necessary to make this law. For a Treaty or Constitution, a Preamble is the Consideration. Without such a brief description you do not know WHO deems it important to have such a Constitution, nor WHY; a statement is required. The Preamble is the answer to that. Second, we opt – as in the American Constitution – not to refer to a Supreme Being. Since the Age of Enlightenment the Church and State are separate entities. It would be inappropriate to refer in a Constitution to a God of whatever religion. Third, a reference to a Royal Family is irrelevant since the majority of the Eurozone countries have no monarch.

For the record we wish to indicate that we follow as literally as possible the American Constitution, thus with respect to structure and text. Where needed or useful, there are adjustments or additions from elements of the Swiss Constitution. With the proviso that we make adjustments as we deem necessary for the Federation Europe.

Therefore, our draft Preamble reads as follows:

> *"PREAMBLE*
>
> *We, the Citizens of Austria, Belgium, Cyprus, Germany, Estonia, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Slovakia and Spain establish this Constitution for all countries in the Eurozone, and furthermore for each country entering the Eurozone, with the goal of forming a Federation that guarantees freedom, order, safety, happiness, justice, defense of the Federation against enemies, sustainability of the environment as well as acceptance and tolerance of the diversity of cultures, convictions, ways of life and languages of all who live and will live in the territory that belongs to the jurisdiction of the Federation."*

The word 'happiness' is not mentioned in the American Preamble. Yet we have decided to include it in our European Preamble. Why? Because the overall meaning of the American Constitution is based on the right of the citizen to pursue his or her happiness and the plight of the government to assist him or her in doing so. This basic element of that Constitution stems from the Declaration of Independence (Thomas Jefferson 1776) that includes the words: *"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the Pursuit of Happiness."*

Besides this, there is a remarkable fact from the aforementioned book of Logevall 'Embers of War: The Fall of an Empire and the Making of America's Vietnam'. Logevall reveals that Ho Chi Min, when he, after the Japanese defeat in 1945 returned to Hanoi, declared Vietnam independent, in doing so using the exact words of the American Declaration of Independence. He loved America and tried – up until France transferred its control over Vietnam to the USA after the fall of Dien Bien Phu in 1954 – to get America on his side. Always in vain referring to Roosevelt's determination to prevent the European countries from repossessing their former colonies after World War II.

With the explicit use of the word 'happiness' in the European Preamble we wish to make clear that the right of each citizen to pursue his or her own happiness, and the obligation of public authorities to help them doing so, is an essential aspect of our federal Constitution. By determining this inalienable right in the Preamble it should be clear for any Government within the European system that achieving this happiness may not depend on the outcome of elections. This construction gives an extra legitimization to having a Preamble: whatever Parliament or Government, these are the goals to which the endeavor of each public official should be dedicated.

With respect to the final part of the Preamble ('acceptance and tolerance of …') we like to emphasize that we are no party in a multicultural debate while striving for a federal Europe. Since the Batavians, Galliers, Goths, Huns, Saxonians, Franks, Romans, Mores, Celts, Habsburgs and Vikings traversed Europe, this continent,

and each State within it, is multicultural. This is a good thing. Respect for and acceptance of linguistic diversity does not necessarily prevent – though – the use of or striving for one communal language or a purposeful choice of several languages in federal procedures. Look for instance at the Swiss with their four official languages, who experience no linguistic conflict.

An example showing that it is even possible within the European Union to opt for some of the official 23 languages is revealed in two EU-regulations (COM (2011) 215 and COM (2011) 216) regarding closer, binding cooperation with respect to establishing a Patent Court with sites in Paris, London and München. These regulations were supported by 25 Member States and agreed upon by European Parliament. Only Spain and Italy did not follow, for linguistic reasons.

We have to add to this diversity issue that Europe possesses a communal basis going back to the norms and values of Christianity – as Larry Siedentop recalls in his 'Democracy in Europe'. Also Gerard Mortier, director of the Teatro Real in Madrid, points at this cultural bond. With regard to Europe, Mortier states in an interview with the Belgian newspaper De Tijd: *"We all are part of one big cultural community (…). The time of the nation states is over. The European identity exists, throughout history. It is a reality, not an invention by the European Commission or European Parliament. Yet: why is it so difficult for politicians to explain this European cultural identity? (…) European cultural identity does not destroy local identity. The Langue d'Oc has not disappeared by becoming part of France, has it? The many different cultures can even express themselves better in a European Federation."*

Now we continue with Article I of our draft Constitution. The Preamble answers the WHY of a European Federation. Article I answers the HOW. Contrary to the American Constitution we open with an Article I constituting the federal system and the Bill of Rights (both coming from Amendments to the American Constitution). Adjusting the numbering of the Articles will also happen in the following Papers 22-24. Partly because we have to incorporate some elements of the twenty-seven Amendments on the American Constitution. Partly because renumbering of some American Articles makes the text looking better. Thus, our draft Constitution will

Article I – The Federation and the Bill of Rights

1. *The European Federation is formed by the Citizens and the States, participating in the Federation.*
2. *The powers not delegated to the European Federation by the Constitution, nor prohibited to the States by this Constitution, are reserved to the Citizens or to the respective States.*
3. *The European Federation endorses the rights, freedoms and principles as written in the Charter of the Fundamental Rights of the European Union, excluding the principle of subsidiarity, as mentioned in the Preamble of this Charter. The European Federation accedes to the European Convention on Human Rights and Fundamental Freedoms.*

contain ten Articles instead of seven as is the case in the U.S. Constitution.

We determine the European federal system in sections 1 and 2, using both the Swiss and the American Constitution.

Explanation of Section 1

Article I is inspired by the American and Swiss Constitution. The text of clause 1 describes the specific nature of a public Federation: she consists not only of States, but also and primarily of her Citizens; a Federation is owned by the Citizens and the States. Anyone who is afraid that a Federation would absorb, as a super State, its participating nation states' sovereignty, should understand by now that within a Federation the States maintain their national identities: France remains France, Estonia remains Estonia, Spain remains Spain and the United Kingdom remains the United Kingdom, if it is prepared to accede to the Eurozone and to the Federation.



France remain France



Germany remains Germany



Spain remains Spain

But there is even more: by emphasizing that the Citizens are co-owners of the Federation there is a constitutional duty to consult the Citizens in case of changing the Constitution and its territory, a right that they up until now do not have under the Treaty of Lisbon: an example of direct democracy. In line with the structure of the American Constitution we shall deal with this right in Article VII of our draft.

The States are also represented on the federal level, next to the Citizens. Their delegates possess an individual mandate. They do not act in name of or on account of the political institutions of their States. We will emphasize this important principle with respect to the functioning of the Federation when we deal with the organization of the bi-cameral European Congress.

Explanation of Section 2

A few years after the ratification of the American Constitution the need occurred to have a Bill of Fundamental Rights. This Bill was established through the ratification of ten Amendments. Amendments 1-9 refer to the Fundamental Rights. We have incorporated them in our Article I, Section 3. The tenth Amendment (introduced by James Madison and ratified on December 15th, 1791), was of a different, more stately nature, due to the explicit reaffirmation of the federal system. We find it important to determine this element in Section 2 of Article I. It clarifies that the European Federation possesses a non-hierarchical division of vertical powers. Governance of both the federal level and that of the States is sovereign in

the cases attributed to these levels – in the sense that the federal level has only limitative enumerated powers, no more. For those who like the historical best practice at the end of the 18th century: this principle of a vertical division of powers was achieved within ten days of the Convention of Philadelphia, some weeks later elaborated in an official draft of the Constitution. It determines that the federal governing body does not possess hierarchical powers above the States.

Those who are unfamiliar with the Treaty of Lisbon, particularly the sub-treaty called 'Treaty concerning the European Union', may wonder "What's new?". Indeed, that Treaty states in Article 4, Section 1: "According to Article 5 the powers that the Treaties have not delegated to the Union belong to the Member States." This seems similar to our Article I, Section 2.

But this is deceptive. Article 5 of the sub-Treaty concerning the European Union determines that the delineation of the Union's powers is controlled by the principle of power attribution. That principle has two sides:

a. Whether the EU has the power to operate is determined by the principles of subsidiarity and proportionality. In short: the European Union is allowed to act in cases where the Member States (or parts of them) cannot act (better). In other words: the principle of subsidiarity (leave to the States what the States themselves can do best) is relative, not absolute.

b. The other part of the Treaty of Lisbon – the sub-Treaty concerning the 'Working of the European Union' – contains some articles with a detailed list of powers attributed to the Union. However, these articles have a hierarchical character, particularly in the group of shared powers. These are powers attributed to both levels of governance, but in case the Union uses those powers the Member States have to obey. This does not exist within a Federation.

If this is not yet enough, the Union possesses also subsidiary powers, based on Article 352 of the sub-Treaty concerning the Working of the EU. This implies that the Union can act if this is necessary for realizing a Treaty-goal and if there is no other article to achieve this goal. This is called 'flexible legal basis'. In our view this is a manipulative, arbitrary key fitting any lock. Apparently, the European Union cannot let go of the technique of invoking the goal of 'more integration' in order to attract power whenever it suits.

This article 352 'kills' the already explained 'subsidiarity principle' (leave to the states what the states can do best). If the European Council thinks a measure to be appropriate for EU-goals, the Council can make that decision, irrespective what the states think or want.

Why does this not resemble federalization? For many years the principle of subsidiarity has been leaking severely. The Protocol that should prevent the Union from taking decisions outside of the domain of the explicitly attributed powers, including the watch-

dog function of national Parliaments to force the Union to respect the Protocol, already operated rather poorly before the Treaty of Lisbon. It stopped working altogether when the Treaty came into force in 2009, since from that moment on the European Council took over the principal decision-making process. No one can stop that machine. Why not? Due to the hierarchy we mentioned under b): once the European Council has made a decision, Member States are obliged to carry it out – this is the aforementioned centrally imposed uniformity. This is not only alien to a federal system, it is also completely unclear who has exclusive powers in what areas. Here and there you may find references to exclusive powers of one or another institution, but the Articles 1-15 of the sub-Treaty concerning the Working of the EU contain so many vague additions that it remains far from the clarity of the American Constitution.

The American Constitution does not acknowledge that the federal body would be able to overrule the powers of the States. That Constitution attributes to the federal governing body a limitative enumerated set of powers and that is it. No hierarchy with regard to the States, nor a sharing of powers. Just as it is the case in the Swiss Constitution.

This is the essence of federalism: a true Federation acknowledges a shared form of sovereignty but no shared powers; each level possesses its own powers. This is the result of the first two weeks of debate in the Convention of Philadelphia starting at the end of May 1787. The aforementioned 'Virginia Plan', put forward by James Madison as a federalist-oriented piece of work, contained the clause attributing to the federal level the power to overrule 'improper' state laws. This provoked opposition, made explicit in the following 'New Jersey Plan'. The debating parties solved this problem in the 'Great Compromise' by opting for a vertical division of powers, made clear by a limitative enumeration of the federal powers: no hierarchy. Thus, no top-down interference if a State carries out its legislative and executive powers improperly.

This is the way to do it. In a federal system the Member States are sovereign in their own territory. Therefore our draft Constitution nowhere refers to the principle of subsidiarity, for the simple reason that the limitative enumeration (to be dealt with later) of powers constitutes the subsidiarity absolutely. The federal body does not have any discretionary powers – let alone arbitrary ones – to determine what a Member State could realize or not realize by itself.

Explanation of Section 3

Due to the fact that the EU Charter of Fundamental Rights is of a very high quality we adopt this Charter in Section 3. The reason why we adopt the Charter as such, but not the principle of subsidiarity (as mentioned in the Preamble of the Charter) was explained above: the structural mal-functioning of that principle allows the EU – following a tradition since the establishment of the European Communities – to proceed annually in producing its centrally imposed uniformity. We can also rephrase it: the principle of subsidi-

arity, as laid down at the beginning of the EU-treaties, has never worked according to its goal, namely to leave to the Member States what the Member States can do best. It is always passed by 'Brussels'. Only by giving the federal body a limitative set of powers (as the Germans say: a 'Kompetenz Katalog') this neglecting of the principle of subsidiarity can be stopped.

In this context we struggle with the issue of law-making technique. You have seen that we apply Article 20 of the sub-Treaty concerning the European Union: nine Member States have the power to establish a strengthened form of cooperation. This is allowed if this strengthening furthers the goals of the European Union, protects its interests and strengthens the integration process. It must not lead to the deterioration of the internal market: one common market for goods, people and capital.

The respective articles of the Treaty of Lisbon (including the Articles 326-334 of the sub-Treaty concerning the Working of the European Union) indicate that in case nine countries opt for such a strengthened cooperation (in our view in the form of a Federation) they are allowed to make use of the institutions of the Union. This would mean, in our interpretation of Article 20 of the sub-Treaty concerning the European Union, that a Federation of nine EU-countries within the intergovernmental EU-system has legal access to all existing EU-institutions, and to their powers. Thus to the European Central bank, the European Court of Justice et cetera.

If this is a correct interpretation – we would like this either confirmed or refuted by a person or persons better qualified than ourselves – Section 3 would be superfluous. Indeed, in that case the Charter of European Fundamental Rights would be applicable as such within the Federation Europe. We would appreciate it if others would educate us on this subject.

Thus far the basis of the federal European Constitution in the Preamble and Article I. The following three Papers will discuss the draft of the other Articles of the Constitution. We describe, among others, the legislative, executive and judicial powers of the European Federation.



Klinkers & Tombeur, March 2013

PAPER 22

In Paper no. 22 Klinkers and Tombeur deal with the Legislature of the European Federation. In their opinion this should reflect both the content and the structure of Article I of the American Constitution, although adapted to their own insights. These concern primarily the election of the members of the House representing the Citizens and the appointment of the members of the other House, the Senate, representing the States. The American Article I is rather elaborate; it contains no less than ten Sections, each subdivided into several Clauses. In order to improve on that structure Klinkers and Tombeur split the American Article I into two Articles: Article II and Article III. They offer general explanations as well as explanations per Section or Clause.



Baruch Spinoza

FAQ 27: How can ten articles cover the variety of European societies?
Well, they can. Due to the fact that in the Constitution we have confined ourselves to only laying down universal principles, that no country in the world can oppose to. Exactly because of its compactness of only ten articles (the Germans say: "In der Beschränkung zeigt sich erst der Meister" - Goethe) it covers all we care for. The Treaty of Lisbon, on the contrary, with over 400 articles, automatically provokes the need of member states to incorporate a great variety of national-driven details and exceptions. That is why it is an extremely bad legal document that destroys the interests of the European Citizens. A law-student who would write such a document would be expelled from the faculty.



VIVIANE REDING

"We need to build a United States of Europe with the Commission as government and two chambers – the European Parliament and a "Senate" of Member States,"

Now we proceed with Article II of our version of a federal European Constitution. As much as possible we follow the structure and content of the American Constitution; we make adjustments if we find that an element could be better structured or formulated. As mentioned before the American Constitution of only seven Articles also contains 27 Amendments. Where necessary we will include them in our federal Constitution. We will also include Swiss and European elements. We do not claim that this is a perfect Constitution. We welcome any proposal to improve our work and shall – where possible – further this draft with the input of readers with more expertise than us.

Article II – Organization of the Legislative Branch

Section 1- Setting the European Congress

1. *The Legislative Branch of the European Federation rests with the European Congress. It consists of two Houses: the House of the Citizens and the House of the States, under the name Senate.*
2. *The European Congress and its two separate Houses have their residence in Brussels.*

Explanation of Section 1, clauses 1 and 2

We consciously chose the words 'Organization of …' in the title of Article II because Sections 1-6 of Article I of the American Constitution deal with organizational/institutional aspects. Sections 7-10 of that Article I are concerned with powers. We prefer to divide this Article into two Articles. Our Article II deals only with the organizational/institutional aspects of the Legislative Branch; a separate Article III will address its powers.

Clause 1 implies that the European Congress holds the same position as the American Congress: the assembly of both Houses together. Only Congress possesses legislative powers. However, this principle should be regarded with some nuance. As mentioned before, the President has a type of derivative legislative power in the form of Presidential Executive Orders. However, this is legislation of a lower order than the formal legislative power of Clause 1. And these Orders must stem from Congressional legislation. Another nuance is that the American Supreme Court has decided more than once that Congress is allowed to delegate legislative powers to federal institutions.

In Clause 2 we choose Brussels as the seat of both the European Congress and both of its Houses. This implies that Strasbourg no longer plays a role as far as meetings of the European Federation are concerned. This means, of course, an extra complication within the intergovernmental system. For many years the intergovernmental European Parliament has been traveling back and forth between Brussels and Strasbourg because France once enforced this and remains unwilling to change this costly kind of commuting, despite the many protests of Parliament itself. This marks one of the serious systemic errors within the intergovernmental system: in its inevitable continuous dealing and wheeling in the game of winners and losers one national interest determines the order of the European whole. We will leave this aside for now.

A European Federation – as part of the European Union until the intergovernmental system will be abolished altogether – will possess its own constitutional, institutional and therefore organizational order (and this is exclusively within Brussels). On the other hand, however, it will be forced to cooperate with this regular moving from Brussels to Strasbourg for its work within the EU. This implies that Brussels would house a European Parliament (of the European Union's intergovernmental system) as well as the European Congress (of the European Federation); the two Parliaments side by side. This complexity will be the inevitable result of the necessity to realize a paradigm shift. Complexity remains, even if we assume that the intergovernmental system will be somewhat alleviated once nine European Member States leave the European Union in order to enter that Union again as a Federation. The complexity, however, would be minimal if all countries of the Eurozone were to decide to join the Federation together. Thus all existing institutions of the European Union would be embraced by the Federation – with some adaptations of course. In that case there would be no necessity to install a European Congress. Rather, the European Par-

liament, transformed into two Houses, could serve as the representative body of the Federation. The Court of Justice would perform the role of the European Supreme Court. As long as both systems exist side by side this institutional simplification will not be feasible.

Section 2 – The House of the Citizens

1. *The House of the Citizens is composed of the representatives of the Citizens of the European Federation. Each member of the House has one vote. The members of this House are elected for a term of six years by the Citizens of the Federation qualified to vote, united in one constituency. The election of the members of the House of the Citizens takes place each time in the month May, and for the first time in the year 20XX. They enter office at the latest on June 1st of the election year. The members resign on the third day of the month May in the final year of their term. They can be re-elected twice in succession.*
2. *Eligible are those who have reached the age of thirty years and are registered as Citizen of a State of the Federation during at least seven years.*
3. *The members of the House of the Citizens have an individual mandate. They carry out this mandate without instructions, in the general interest of the Federation. This mandate is incompatible with any other public function.*
4. *The right to vote in elections for the House of the Citizens belongs to anybody who has reached the age of eighteen years and is registered as Citizen in one of the States of the Federation, regardless of the number of years of that registration.*
5. *The House of the Citizens choose their Chairperson, with the right to vote, and appoint their own personnel.*

Explanation of Section 2

In what way do we deviate from the American Constitution? First, with our choice to have one constituency throughout the Federation; no elections for the House of the Citizens per State – as is the case in the United States and in the European Union. We reject the idea of being confined to electing candidates of national States. Our vision is that Citizens throughout the Federation should be able to vote throughout the Federation: one constituency consisting of all countries of the Eurozone.

A German should have the right to vote for a Belgian, a Briton, a Spaniard and vice versa. One federal constituency makes possible the creation of effective transnational political parties. As far as we know – at this moment, March 2013 – only one transnational European political party exists: the European Federalist Party (EFP). However, the problem is that this party, forced by the present intergovernmental system, can only participate in the European elec-



The Federation as one constituency: no borders, no national-driven European elections, the right to vote throughout the Federation.

tions through its national sections. Voters can only vote for national candidates of the EFP, as well for candidates of other parties.

A direct relation between the Citizens and their Representatives can only be established through one constituency of the European Federation. With respect to the text of this Section this choice implies that we leave aside the extended description of the American election system.

The primary objection of Americans against one American constituency throughout the USA (rather than the present system of Electoral Colleges per State) stems from their fear that the population in densely populated areas and major cities may gain more influence than the inhabitants of rural areas. This would disturb the balance of power within the House of Representatives. However, the electoral system of our choice is based on the so-called list-system: each transnational political party deposits a list of eligible candidates, the electorate votes by selecting a candidate from their preferred list. The electoral quota determines how many votes one candidate needs to acquire a seat. An example of the electoral quota: if there are ten million valid votes for one hundred seats in the House of the Citizens, then the electoral quota will be 10,000,000 : 100 = 100,000 votes. This amount of votes is required to obtain one seat; that is the electoral quota.

The political parties themselves will determine which candidate is number 1, or 48 or 250 on the list. If the American Democrats and Republicans would decide to label seats 1-100 to women, then seats 100-200 to candidates from rural areas and the remainder to citizens of New York City, the House of Representatives would primarily consist of women, people from rural areas and some from NYC. In other words: a balanced or unbalanced European House of the Citizens – for instance with respect to nationalities – is determined by the way in which political parties compose their electoral lists. The political parties can prevent tiny member States from acquiring none or only few representatives in the House of the Citizens. The trans-European political parties are responsible for including skilled candidates for the House of the Citizens, throughout the Federation, in eligible positions on the electoral list.

In addition, this list-system is by far the most appropriate to further gender equality. If all political parties compose their electoral lists by using an alternate positioning of woman-man-woman-man, etc, then the composition of the House of the Citizens will be near the ratio of 50% women and 50% men.

We do not consider interim elections for members of the House who resign earlier than required. We propose that the list-system contains also a system of deputies.

Which leads us to the question "How would a German know if he should vote for a Luxembourger or a Cypriot?" Well, this is a non-issue. He does not need to know that, because in the European Congress only European matters are at stake, not German or other national interests. He only needs to believe in the political agenda of the transnational party of his choice. And thus believe that this party has included its best candidates, a cross-section of EU-nationalities, on its electoral list.

So far our observations regarding our first deviation of the American Constitution. Second, we will not follow the two-year term of members of the American House of Representatives. We opt for six years, unabridged. For the simple reason that the European Union's democratic deficit has been highly criticized for many years; this can only be fully rectified by placing the center of political gravity with the representatives of the Citizens. The European States have – by applying their nationalistic-driven interests of intergovernmentalism – robbed the representatives of the Citizens of their powers for too long.

Moreover, we think that it is not good to send the members of the House of the Citizens on an election tour every two years. Once they know how to perform within the parliamentary system they have to try to get re-elected. Within a European Federation they can devote the major part of their six-year term to taking care of the interests of the Citizens rather than of their personal interest in acquiring re-election. Each member of the House of the Citizens can be re-elected, in succession. However, we would like to limit re-election to two terms. Thus a maximum of eighteen years in the House of the Citizens. In this way we may prevent that a concentration of power, laziness or a too powerful influence on the part of lobbyists will deteriorate the quality of the representative office.

The following question we cannot answer at this moment is: how many members should the House of the Citizens consist of? In the USA the number is fixed to 435, representing 308.745.538 inhabitants (census 2010). The 27 countries of the European Union comprise about 504.149.000 inhabitants. The 17 countries of the Eurozone count circa 332.976.000 inhabitants. Two matters have to be dealt with here: first, how many representatives will there be for the circa 500 million inhabitants of the entire European Union? Second, how large should this House of the European Congress be if the European Federation will start with only nine countries of the

Eurozone? We cannot answer these questions right now. However, taking into account circa 600 million inhabitants after the inclusion of all European countries in the Federation, including several States awaiting admission such as Croatia and Turkey, the House of the Citizens should consist of around 600 people.

Nor can we foresee in which year the first elections of the House of the Citizens could be organized. Its date depends on the time the European Constitution is going into force. We prefer though the month May of that year, and for any following election, because that month is mostly used for the election of the Parliament of the European Union. A temporarily living next to each other, the European Federation and the European Union, is inevitable. We can imagine that election campaigns and processing the election results in the Federation take some time. That is why we write in this draft Constitution that the members elect enter their office at the latest on June 1st of that election year.

Contrary to the American Constitution, we determine in Clause 2 of this Section the age of eligibility for the House of the Citizens at thirty years instead of twenty five. Why? In order to guarantee that the elected people possess enough knowledge, wisdom and life experience for such an important office. The emphasis should lie on generalists rather than on specialists. The trend in the Netherlands, for instance, to allow candidates of only twenty years of age to gain a seat in Parliament is wrong. The same applies to Belgium: the minimum age there is 21. We think that this is as useless as selecting a sixty year-old in the football team to play for CF Barcelona or Manchester United. We see in this trend only an advantage for dynasty formation of politically active families.

In the third Clause of this Section we determine explicitly – following both the American and Swiss Constitution – that the members of the House of the Citizens have an individual mandate, and are only to be held accountable by the European Citizens. Their mandate is also exclusive: they are not allowed to hold any other public office, on whatever level of public administration. Thus we avoid conflicts of interests and a concentration of powers.

Besides this we should deal with another important aspect. There are, alongside the 435 members with the right to vote in the American House of Representatives, six members without the right to vote in that House. They are from the District of Columbia (= D.C. with the federal capital Washington), Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands and a ‘resident commissioner’ of Puerto Rico. Always looking for as much as possible congruency with the American constitutional system we have the following point of view.

Brussels is the constitutional capital of the European Federation. But it is not, as is the case with Washington in the District of Columbia, a territory with such a constitutional status that it should

legitimize membership of the House of the Citizens. Therefore no seat for Brussels in the European Congress.

Section 3 – The House of the States, or the Senate

1. *The Senate is composed of eight representatives per State. Each Senator has one vote. The Senators are appointed for a term of six years by and from the legislature of the States, provided that after three years half the number of Senators resign. The first appointing of the full Senate takes place within the first five months of the year 20XX. The three-yearly appointments to replace half of the Senators takes place in the first five months of that year. The Senators enter their office at the latest on June 1st of the year of their appointment. They resign on the afternoon of the third day of the month May in the final year of their term. The Senators who resign are immediately re-appointable for a further term of three years. The Rules of Proceedings of the Senate regulate the way of resigning of one half of the Senate.*
2. *Eligible as Senator are those who have reached the age of thirty years and who have been registered for a period of at least seven years as Citizen of a State of the European Federation.*
3. *The Senators have an individual mandate. They carry out this mandate without instructions, in the general interest of the Federation. This mandate is incompatible with any other public function.*
4. *The Vice-president of the European Federation chairs the Senate. He has no right to vote unless the votes are equally divided.*
5. *The Senate elects a Chairperson pro tempore who in the absence of the Vice-president, or when he is acting President, leads the meetings of the Senate. The Senate appoints its own personnel.*
6. *The Senate holds the exclusive power to preside over impeachments. In case the President, the Vice-president or a member of Congress is impeached the Senate will be chaired by the Chief Justice of the Court of Justice. In case a member of that Court is impeached the President will chair the Senate. No one shall be convicted without a two third majority vote of the members present.*
7. *Conviction in cases of impeachment shall not extend further than the removal from office and disqualification from holding any office of honor, trust or salaried office within the European Federation. The convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.*

Another matter is what status the 24 so-called Overseas Countries and Territories should have. These are countries elsewhere in the world that are connected to the Constitution of France, the United Kingdom, the Netherlands and Denmark. Their associated membership with the European Union resembles the status of the six territories without the right to vote in the American House of Representatives. That is why we would like to advise the EU-related Overseas Countries and Territories to be granted a similar status in the European House of the Citizens: membership without the right to vote. This leaves open the following question: how many representatives should they deliver and who elects them? This should be solved in a simple way: the four concerned Member States (if participating in the European Federation) organize in their own

Overseas Countries and Territories an election for one representative of the House of the Citizens, without the right to vote in that House. The principle of incompatible positions should be applied here too. One cannot be a representative in the European House of the Citizens and hold a public position in an Overseas Country or Territory.

Explanation of Section 3

With regard to the composition of the Senate we opt for the original version of the American Constitution of 1789. According to that text, the Senators were chosen by the legislatures of the States. Thus they were not elected by the Citizens. This changed with the ratification of Amendment XVII in 1913. Since then the composition of the Senate is the result of the voting by the Citizens in each State. We wonder if this Amendment is beneficial. The explicit goal of the House of Representatives has always been to represent the interests of the Citizens and that of the Senate to represent the interests of the States. This is an essential element of the federal system: the Federation is formed by the Citizens and the States. That is why their representation is regulated separately, from two separate sources: one from the Citizens and one from the States.

By shifting the appointment of the Senators by the States legislatures to electing them by the States-Citizens, the Senate's emphasis is also shifted towards taking care of the interests of the Citizens. This has led to a 'strengthening' of federal powers in Washington. At least in the perception of the Republicans. This has for some years been the subject of heated debate between Republicans and Democrats. It has reached a point where Citizens of some States once again call – as was the case in 1861 – for leaving the Union. At this moment (February-March 2013) an action is taking place within the Parliament of the State of Oklahoma to adopt a bill to nullify the 'Obamacare' Act. This attempt to nullify is without any constitutional basis. A State does not possess such a power. However, this unconstitutional attempt at nullifying a federal act is significant as it adds to the tensions between the federal body and some States.

To prevent this discussion from spreading to Europe we opt for a system in which the Senators will be chosen from and by the States-legislatures. Eight Senators per State. Why not – as is the case in the USA – only two Senators per State? And why eight? That is to guarantee that each State of the European Federation is adequately represented in the federal Senate, however small or thinly populated it may be. By granting each member State eight representatives in the Senate, each State is ensured of sufficient representation to participate effectively in the federal decision-making process. Moreover, the number eight can be a stimulus for the smallest European countries (with only a couple millions of inhabitants) to join the European Federation. According to the Treaty of Lisbon, at present they are guaranteed five to eight seats in European Parliament. By joining the European Federation they will maintain eight seats within the European Congress, even if these

smallest States should fail to gain a seat in the House of the Citizens.

The previous paragraph explains why we chose for eight instead of two Senators per State. Another question is: why not twelve or fourteen or even more? The reason is that this would create the risk of specialization. It is certain that the House of the Citizens will harbor specialists. That will do. In our vision the Senate should be composed of generalists, wise persons with a broad experience in the way a State translates societal developments into wise policies.

We opt for a six-year term for the Senate as well, provided that half of them will resign after three years, while being immediately re-appointable for one second term. This three-year change is based on our wish to realize and to maintain strong support from the Parliaments of the States, since national elections in the nine States (or more) will hardly ever concur all with the elections for the European Congress. We do not consider elections for early replacement of Senators, which implies the necessity of having a system of deputies in the Rules of Proceedings of the Senate and in the respective national Rules of Proceedings.

As is the case for the House of the Citizens we cannot foresee in which year the first appointments for the European Senate might take place. The date depends on the time on which the Constitution will go into force. We can imagine though, that appointing the Senators by the Parliaments of the States presuppose that all national legislatures are in session. However, it might be possible that the planned appointment of Senators coincides with parliamentary elections in one or more States. That is why we choose for a period of five months to handle the appointment of the Senators. Thus, the States are able to appoint their Senators each three years, before a parliament will be dissolved, prematurely or not. This safeguards the continuity of the governance of the Federation. The only disadvantage seems to be that the Senators in case of premature dissolving of their national Parliament will have to wait some extra weeks before entering their office, but anyhow on June 1st of the year of their appointment.

Clause 2 of both Sections sees to it that Citizens from other parts of the world should have officially resided for at least seven years in one of the States; thus, they are sufficiently integrated to be eligible.

Clause 3 states that the Senator’s mandate is individual; a Senator does not operate under instructions, not even from the Parliament appointing the Senator. The mandate is also exclusive in the sense that it excludes any other public function.

Clause 6 refers to a Court of Justice, a Supreme Court of the European Federation. Thus next to the present Court of Justice of the

EU. If all EU-countries were to join the European Federation it would be natural to regard this EU-Court of Justice as the Supreme Court of the Federation. As long as only nine Eurozone countries are to join the Federation, it will be necessary to establish a separate Court of Justice for the Federation. This is our opinion. But we would like to submit this to specialists in this field for assessment.

Following the American Constitution Clauses 6 and 7 deal with judging people who committed severe crimes while holding a public office.

The same status issue applies to the position of the 79 ACP-countries: now independent, but previously colonies of European countries. The European Union maintains special ties with these countries in Africa, the Caribbean and the Pacific, primarily aimed at the creation of trade relations that are beneficial to both parties. However, these ties are always under pressure. Whereas the EU – in the context of the World Trade Organization's policy – emphasizes the elimination of trade barriers, the ACP-countries keep focusing on a continuation of trade protection. The periodical renewal of the treaty between the EU and the ACP-countries seems unable to mitigate these tensions; on the contrary. However, we cannot afford a continuation of these tensions in the globalizing world. That is why also for this theme we propose a paradigm shift: furthering the operation of the EU-ACP treaties by granting the ACP-countries an institutional/organizational seat in European Congress – with the emphasis on 'institutional/organizational'. Granting them a constitutional seat is impossible because it concerns independent sovereign States outside of Europe. But on what grounds could we oppose to giving them six seats (without the right to vote) in the Senate – the House explicitly intended to take care of the interests of the States? Six seats implying: two per African-, Caribbean- and Pacific-group. In order to further gender equality the two members of each group should be a woman and a man.

Even though it will be without the right to vote, they should participate in debates within the Senate Committee(s) working on trade-related treaties that the President sends to the Senate for approval. This would give a positive impetus to present tensions between the EU and the ACP: these countries would no longer be negotiators at the other end of the table, but partners arguing for the same cause. It seems appropriate for the three groups of countries to take care of the election or appointment of their representatives in the Senate of the European Federation themselves. Here the principle of incompatibility of public positions should be applied as well. These representatives should not hold any other public function, wherever.

It seems unnecessary to include this item as such in the European Constitution. The specific relationship between the European Federation and the ACP-countries can be dealt with in a treaty. In case anyone claims that the Constitutional absence of this membership of the Senate would imply that granting this membership of the

Senate through a treaty would be a breach of the Constitution, the European Supreme Court can decide – based on the teleological nature of this matter – that this is in accordance with the Constitution.

Should all present Eurozone countries join the European Federation the Senate would consist of 17 x 8 = 136 people. Plus the aforementioned 3 x 2 = 6 from the ACP-countries, without the right to vote. Herewith we confirm the assumption, already created in the heads of some readers, that there is no place for Heads of States and national Leaders of Governments in the two Houses of the European Congress.

The primary argument in favor of this out-of-the-box step can be read in Paper no. 9, where Tombeur explains that Europe has to position itself rapidly within globalizing relations, in which new superpowers will determine the rules of the political and commercial game. By giving the ACP-countries an organizational seat within the European Federation, Europe would be some steps ahead of those superpowers.

Section 4 – The European Congress

1. *The time, place and manner of electing the members of the House of the Citizens and of appointing the members of the Senate are determined by the European Congress.*
2. *The European Congress convenes at least once per year. This meeting will begin on the third day of January, unless Congress determines a different day by law.*
3. *The European Congress settles Rules of Proceedings for its manner of operating.*

Explanation of Section 4

Contrary to the American Constitution we propose that the European Congress, thus not each House separately, regulates the organizational aspects of the Houses' composition. This is due to our decision to have one constituency for the entire European Federation with respect to the election of the House of the Citizens. Thus no election of representatives of Citizens of individual States, but of all Citizens throughout the Federation. In this way this House is the indisputable emanation of the Citizens of the Federation.

Clause 2 is part of American Amendment XX, ratified in January 1933. Clause 3 is self-evident. The Rules of Proceedings of the people's representatives are the second most important document – after the Constitution – because they regulate the procedures for democratic decision making.

Section 5 – Rules of Proceedings of both Houses

1. *Each House settles Rules of Proceedings. They regulate what subjects require a quorum, how the presence of members can be enforced, what sanctions can be imposed in case of structural absence, what powers the Chairperson has to restore order and how the proceedings of meetings and votings are recorded.*
2. *The Rules of Proceedings regulate punishment of members of the House in the case of disorderly behavior, including the power of the House to expel the member permanently by a two third majority.*
3. *During meetings of the European Congress no House may adjourn for more than three days without the consent of the other House, nor may it move its seat outside of Brussels.*

Explanation of Section 5

Thus there are three Rules of Proceedings: one of the European Congress (the two Houses together) and one for each House separately. The recording of the debates and votes imply open access to these documents, unless a House decides that some subjects need to be addressed behind closed doors.

Section 6 – Compensation and immunity of members of Congress

1. *The members of both Houses receive a salary for their work, determined by law, to be paid monthly by the Treasury of the European Federation. Next to that they receive a compensation for travel and accommodation expenses in accordance with the real expenses made, and confined to the travels and activities justified by their work.*
2. *The members of both Houses are in all cases, except treason, felony and disturbance of the public order, exempted from arrest during their attendance at sessions of their respective House and in going to and returning from that House. For any speech or debate in either House they are not to be questioned in any other location.*

Explanation of Section 6

Clause 1 is self-evident. Clause 2 refers to immunity in order to guarantee the free exercise of the representative's mandate; each member of Congress should be able to function without external pressure.

Article III – Powers of the Legislative Branch

Section 1 - Way of proceeding to make laws

1. *The House of the Citizens has the power to initiate tax laws for the European Federation. The Senate has the power – as is the case with other law initiatives by the House of the Citizens – to propose amendments in order to adjust federal tax laws.*
2. *Both Houses have the power to initiate laws. Each draft law of a House will be presented to the President of the European Federation. If he/she approves the draft he/she will sign it and forward it to the other House. If the President does not approve the draft he/she will return it, with his/her objections, to the House initiating the draft. That House records the presidential objections and proceeds to reconsider the draft. If, following such reconsideration, two thirds of that House agree to pass the bill it will be sent, together with the presidential objections, to the other House. If that House approves the bill with a two third majority it becomes law. If a bill is not returned by the President within ten working days after having been presented to him/her, it will become law as if he/she had signed it, unless Congress by adjournment of its activities prevents its return within ten days. In that case it will not become a law.*
3. *Any order, resolution or vote, other than a draft law, requiring the consent of both Houses – except for decisions with respect to adjournment – are presented to the President and need his/her approval before they will gain legal effect. If the President disapproves, this matter will nevertheless have legal effect if two thirds of both Houses approve.*

Explanation of Section 1

Here we make an adjustment to the structure of the American Constitution. The American Article I consists of ten Sections. They deal with both the organization and the powers of Congress. We prefer to split these two aspects into two Articles. That is why we call our Article II 'Organization of the Legislature', encompassing the Sections 1-6. We have included Sections 7-10 in a new Article III, 'Powers of the Legislature', its Sections numbered 1-4.

Both Houses initiate draft laws – not the President or the Ministers of the President's Cabinet. These people do not even perform in the Houses. This strict division of powers between the legislative and the executive branch will guarantee the European Congress' autonomy with respect to its core task: initiating and concluding laws.

Clause 1 of Section 1 grants the power to draft federal tax laws exclusively to the House of the Citizens. Contrary to drafting federal laws in general, the Senate does not have this power. The Senate is, however, entitled to try to adjust federal tax laws by amendments. The reason to give this power to take the initiative exclusively to the House of the Citizens is based on the consideration that 'groping in the citizen's purse' should be subject to consideration by the people's representatives only.

As an aside we would like to address the question: *"If Europe would be a Federation like the United States of America, would the banking and economic crisis have been dealt with more effectively?"* The Bank of the Netherlands (DNB) answers this question affirmatively in its Annual Report 2012. In the extended paragraph 1,5 the DNB makes it clear in what respect the American federal system proved to be the basis for a quick and effective approach of these crises. We would like to refer the reader to some remarkable details in the Annual Report 2012, but not without failing to mention one aspect here. The American federal body can absorb more public and other debts than the EU. In 2012 the American budget was 24% of the GDP. Compared to this the EU is a financial midget: just over 1%. The American Federation began with the slogan: 'no taxation without representation'. In the EU it is 'representation without taxation'.

Thus, the House of the Citizens decides on what kind of federal tax will be introduced: income tax, corporate tax, road tax, property tax, value added tax, et cetera. Or maybe it leaves these kinds of taxes to the jurisdiction of the respective States, creating only one new federal revenue tax, under the condition that it lowers or abolishes State taxes simultaneously in order to prevent that federal taxation will be at the expense of the people. That is all we like to say about this subject because it is something to be decided upon by the representatives of the House of the Citizens. That is why we also do not interfere in the dispute regarding the harmonization of taxes on a European level, for instance the corporate tax.

Remarkable in Clause 2 is the so-called Lex Silencio Positivo, a rule from Roman Law: if the President does not decide on the draft within ten days it will become law. If the President disapproves he/she has to return it, together with his/her objections, to the House initiating the bill. As mentioned before, this is the President's veto right. However, the word 'veto' is not mentioned in the Constitution as such.

It seems appropriate to deal here with one of the present-day consequences of the American choice to supplement the principle of the trias politica with an ingenious system of checks and balances. Since the end of 2012 until now (March 2013) the President and the Senate have blocked the possibility to solve the US-budget crisis. Looking at this superficially, one would be inclined to blame a constitutional systemic error: if both institutes stick obstinately to their constitutional powers they create a deadlock, and therefore the Constitution should be blamed. However, this point of view is wrong if one goes back to the one and only reason for installing these checks and balances: never again shall there be a power that is the absolute boss over all others. This compels the parties concerned to demonstrate their responsibility, given to them by the people, when a possible deadlock occurs. And this implies taking care of solving the deadlock, one way or another. The continuation of this sad situation does not stem from a constitutional systemic flaw of the American Constitution, but rather from the inability of the respective politicians to assume their responsibility in the general interest.

Section 2 – Substantive powers of the Houses of the European Congress

The European Congress has the power:

a. to impose and collect taxes, imposts and excises to pay the debts of the European Federation and to provide in the expenses needed to fulfill the guarantee as described in the Preamble, whereby all taxes, imposts and excises are uniform throughout the entire European Federation;

b. to borrow money on the credit of the European Federation;

c. to regulate commerce among the States of the European Federation and with foreign nations;

d. to regulate throughout the European Federation uniform migration and integration rules, what rules will be co-maintained by the States;

e. to regulate uniform rules on bankruptcy throughout the European Federation;

f. to coin the federal currency, regulate its value, and fix the standard of weights and measures; to provide in the punishment of counterfeiting the securities and the currency of the European Federation;

g. to regulate and enforce the rules to further and protect the climate and the quality of the water, soil and air;

h. to regulate the production and distribution of energy;

i. to make rules for the prevention, furthering and protection of public health, including professional illnesses and labor accidents;

j. to regulate any mode of traffic and transportation between the States of the Federation, including the transnational infrastructure, postal facilities, telecommunications as well as electronic traffic between public administrations and between public administrations and Citizens, including all necessary rules to fight fraud, forgery, theft, damage and destruction of postal and electronic information and their information carriers;

k. to further progress of scientific findings, economic innovations, arts and sports by safeguarding for authors, inventors and designers the exclusive rights of their creations;

l. to establish federal courts, subordinated to the Supreme Court;

m. to fight and punish piracy, crimes against international law and human rights;

n. to declare war and make rules concerning captures on land, water or air; to raise and support a European defense (army, navy, air force); to provide for a militia to execute the laws of the Federation, to suppress insurrections and to repel invaders;

o. to make all laws necessary and proper for carrying out the execution of the foregoing powers and of all other powers vested by this Constitution in the Government of the European Federation or in any Ministry or Public Officer thereof.

Explanation of Section 2

This Section 2 contains the limitative enumerated powers of the legislature, the European Congress. It characterizes the vertical division of powers in a Federation. Only these powers – exclusively intended to take care of common interests that cannot be dealt with sufficiently by individual Citizens or States – belong to the European Congress. No other powers, no hierarchy. The essence of the vertical division of powers is that Citizens and States request a federal body to be so kind as to take good care of enumerated common interests (for which they are prepared to pay), without giving that federal body the right to assume it is the boss. All other powers remain with the Citizens and the States, untouchable by the federal body. Thus the States maintain their own Parliament, Government and Judicial branch for all matters not vested in the federal body.

This Section 2 is our version of the so-called Kompetenz Katalog, proposed by Germany during the drafting of the Treaty of Maastricht in 1992, and proposed many times thereafter, but always rejected by other EU-countries. One of the most serious flaws of the intergovernmental system.

Our list is something completely different from the limitative enumerations (plural) to be found in the Treaty concerning the workings of the European Union. Not only are they not precisely and indeed limitative enumerated, they are also stifled by the uncontrollable principle of subsidiarity, the hierarchical execution of powers and the sharing of powers: all curses within a real Federation because they erode the participating States' sovereignty. The principle of a limitative enumeration of federal powers is one of the greatest achievements of the debates in the Convention of

Philadelphia, which was realized within the first two weeks of their debate.

It seems good to quote here Frank Ankersmit, emeritus professor in the history of philosophy. In the Dutch Yearbook Parliamentary History 2012, titled 'The United States of Europe', he writes: *"It is not useful to dwell here on the European decision-making and therefore it is sufficient to ascertain that it contradicts everything that has been thought of in the history of political philosophy on public decision-making. This type of decision-making is completely unique in history – and that is not meant in a positive way. Considering the immense problems of European unification one can sympathize with this; but is still remains an ugly thing. Especially, this decision making is the official codification of all uncertainties about the ultimate goal of the European unification. It is as if the European administrators consciously translated this uncertainty into a structure of governance which is its organizational expression. It is as if they want to fix indissolubly Europe's inability to jump sooner or later over its own shadow in a structure of governance that makes this impossible indeed."* (underlining by K&T)

Compare this to what was stated by Klinkers in Paper no. 11: the Treaty of Lisbon is such a crippling document (legislatively, democratically, organizationally and with respect to decision-making processes) that renewal is only possible by stepping out of that box; avoiding the pitfall of trying to improve that system by changing the cursed Treaty. It is filled with systemic errors. Any new amendment will be poisoned by the same errors because they are 'genetically' branded. Strong arguments against any adjustments of the EU-Treaties and in favor of an autonomous European Constitution are also to be found in 'We the Peoples - Europa en de Amerikaanse Constitutie' by Hugo Klijn.

Those with a leading position within the intergovernmental system do not realize the destructive influence of wrong law-making on society. A fundamental knowledge of and insight into the necessity of a well-thought stately design, as the basis for a well-functioning society, is apparently absent. Even – we are sorry to say this – in sincere federal European circles. Where this knowledge and insight does nevertheless appear, it is not supported by statesmanship.

We consider this to be an undesired disregard of the principles and standards of law making. As a playing down and brushing away of the necessity to take care – under all circumstances – that the stately basis of society has a professionally formulated codification. Even if parts of laws, especially administrative laws, have an instrumental function (law as an instrument to realize political goals) there are still doctrines of fundamental law that may not be touched by politics or policies. To deny this is denying that the rule of law prevails over tyranny. For more insights into the concept of 'disregarding the law' we refer to the book 'Rechtsrelativering' (Disregarding the Law) by Peter van Lochem.

Let us continue with the draft of the federal Constitution. Essential additions which go beyond the American Constitution are: 1st point d, migration policy as a federal matter and no longer belonging to individual European States, however their assistance is required in the execution of immigration regulations. 2nd points g–j are new elements pertaining to modern society; 3rd point n, the creation of one European defense (army, navy and air forces). A well-known dispute driven by national(istic) tendencies, but as an example of provincial folklore under a federal Constitution not worth any further debate. Paper no. 12 already described the sad story regarding the attempts at establishing a European defense force after World War II. We leave this aside for now.

This Section 2 deals with the most important aspect of a Federation: the vertical division of powers between the Federation on the one hand and those of the Citizens and States on the other. What is vested in the European Congress is summed up there. This does not imply that this also makes clear how many Ministries the executive branch should consist of. Thus, for which policy domains should there be a Minister? We will elaborate on this question when dealing with the Articles regarding the executive branch.

As far as the limitative enumeration is concerned we have to make three nuances.

Firstly, we indicate that the European Federation has the power, naturally, to carry out its mandate not only within, but also outside of the territory of the Federation. For instance by agreements to Treaties. We connect the federal powers both to its internal and external foreign policy. The same applies to the States of the Federation. How this will work, will be dealt with in the Articles regarding the executive branch.

Secondly, we have to refer to the final power of Section 2, point o. In the text of the American Constitution: *"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."* This is the famous 'Necessary and Proper' clause: Congress can make all laws that it deems necessary and proper. However, if these laws do not stem unmistakably from the list of limitative enumerated powers of Article I, Section 8 (our Article III, Section 2) the President can veto them. Or the Supreme Court can rule that they are unconstitutional: the so-called Supreme Court's judicial review.

Thirdly, there is another important aspect. The American Congress has actually more powers than mentioned in its Constitution under Article I, Section 8 (our Article III, Section 2). This is the domain of the 'implied powers', which are not explicitly mentioned in the Constitution but derived from the body of powers of the American Section 8.

One of the primary implied powers concerns the 'Congressional Oversight'. This oversight – primarily organized by parliamentary committees (both standard and special committees) – deal with the complete functioning of the executive power and federal agencies. The goal is to enhance effectiveness and efficiency, in order to keep the executive branch within the confines of its direct tasks (the execution of laws), to detect waste, bureaucracy, fraud and corruption, to protect civil rights and freedoms, etc. It is an all-encompassing overview of the entire policy-implementation process. This is not a recent aspect of the American system. It is part of the original Constitution and is an indisputable element of the aforementioned system of checks and balances. The Constitution does not literally refer to this Congressional oversight but it is considered to be an unalienable lengthening of the legislative branch: if you have the power to make laws you should also have the power to control whatever happens with respect to their execution. A self-evident matter in administrative processes.

Of course there have been attempts at claiming that these implied powers conflict with the American Constitution. However, the Supreme Court has always denounced that claim. This is in line with President Woodrow Wilson's vision (regarded by academics in the science of public administration as the first public administrationist) to consider this parliamentary oversight as important as making laws: *"Quite as important as legislation is vigilant oversight of administration."*

All of this, recognizing that the American Constitution, in Article I, Section 9, determines within what confines Congress may exert its limitative enumerated powers of Section 8.

We would like to draw attention to some specific clauses of our, adapted, Section 2.

Firstly Clause a, the power to impose and collect taxes, etc. Taxes are needed to pay for debts and 'for the common Defense and general Welfare of the United States'. We have substituted the quoted words with: 'needed to fulfill the guarantee as described in the Preamble'. Generating its own income for the federal body, in our view, should extend beyond paying for federal debts and financing expenses in the areas of defense and general welfare. Besides explicitly referring to the necessity of being able to pay off debts, we deem it important to refer directly to the guarantee in the Preamble. Thus, imposing and collecting taxes etc., in order to be able to finance the expenses for "freedom, order, safety, happiness, justice, defense against enemies of the Federation, environmental sustainability, as well as for the acceptance and tolerance of the diversity of cultures, convictions, ways of life and languages of all who live and will live in the territory that is under the jurisdiction of the Federation".

In the American Constitution clause c is called the 'Commerce Clause'. From the point of view of Obama's offer in his latest State

of the Union, to create a new trade treaty between the USA and the EU, the execution of this clause will be of great importance for recovering the financial-economic status of the EU. We agree with Koen Berden and Marcel Canoy in their article 'EU kikkert op van vrijhandel met de VS' (EU revitalizes through free trade with the USA), in the Dutch newspaper NRC Handelsblad of March 16th 2013, claiming that the elimination of trade barriers is of great importance for the EU's economic recovery. This is also important with respect to our proposal to grant six representatives from the ACP-countries holding a non-voting seat in the Senate: the economic survival of Europe largely depends on its ability to anchor institutionally, completely new insights on trade-relations in the foundation of its stately organization.

Section 3 –Guaranteed rights of individuals

1. *The immigration of people, by States considered to be permissible, is not prohibited by the European Congress before the year 20XX.*
2. *The right of habeas corpus is not suspended unless deemed necessary for public safety in cases of revolt or an invasion.*
3. *The European Congress is not allowed to pass a retroactive law nor a law on civil death. Nor pass a law impairing contractual obligations or judicial verdicts of whatever court.*

Explanation of Section 3

Section 3 deals with fundamental restrictions – in order to protect the individual – of the federal powers which are attributed to the European Congress in Section 2. This concise Section 3 about individual rights will do in this draft Constitution. There is no need for more. Indeed, Article I, Clause 3 of this draft endorses the Charter of Human Rights of the EU, except for the litigious principle of subsidiarity, and that the Federation accedes to the Treaty of Human Rights and Fundamental Freedoms, agreed in the context of the Council of Europe (see Paper 21).

Clause 1 of Section 3 tells us that the States can continue – for some years – their own foreign residents policy. From the year 20XX this policy will become federal. By making this policy shift the Federation introduces a policy of inviting and welcoming foreigners, under certain conditions, rather than the bureaucratic mechanisms and deterring legal structures to block them from entering the European Federation or expelling them. The European Federation may make good use of tens of millions of active, entrepreneurial 'dissenters' to pull the European economy out of its crisis and to countervail the aging of the present European population. This requires a migration policy which is organized for the advantage of Europe and that of the migrant. European policy makers may get their inspiration from the successful policies in Federations such as Australia, Canada and the USA.

Section 4 – Constraints for the European Federation and its States

1. *No taxes, imposts or excises will be levied on transnational services and goods between the States of the European Federation.*
2. *No preference will be given through any regulation to commerce or to tax in the sea ports and air ports of the States of the European Federation; nor will vessels or aircrafts bound to, or from one State, be obliged to enter, clear or pay duties in another State.*
3. *No State is allowed to pass a retroactive law nor a law on civil death. Nor pass a law impairing contractual obligations or judicial verdicts of whatever court.*
4. *No State will emit its own currency.*
5. *No State will, without the consent of the European Congress, impose any tax, impost or excise on the import or export of services and goods, except for what may be necessary for executing inspections of import and export. The net yield of all taxes, imposts or excises, imposed by any State on import and export, will be for the use of the Treasury of the European Federation; all related regulations will be subject to the revision and control by the European Congress.*
6. *No State will, without the consent of the European Congress, have an army, navy or air force, enter into any agreement or covenant with another State of the Federation or with a foreign State, or engage in a war, unless it is actually invaded or facing an imminent threat which precludes delay.*

Explanation of Section 4

According to the Clauses 1 and 2 of this Section the States, nor the Federation itself, are allowed to pass or maintain laws which constraint or impede the economic unity of the Federation. The internal market of the Federation and the EU is free.

Again, powers that are not explicitly granted to the European Congress by Article III, Section 2 of the Constitution are powers of the Citizens and the States. This is the other side of the coin with the title 'vertical division of powers'. Nevertheless, America thought it useful and necessary to curb not only Congress in Article I, Section 9, but also to remind the States that their powers are not unlimited. To that purpose the American Article I, Section 10 (our Article III, Section 4), makes clear what States should not do.

Clause 3 limits the legislative power of the States in the same manner as the legislative power of the Federation, as mentioned in Section 3, Clause 3, to maintain legal security, to not curbing the power of the Judicial Branch and to safeguard existing Citizen's rights. Furthermore there is an important matter, often decided upon by the Supreme Court, that no State is allowed to make laws lifting contractual bonds. Legal security for contracting or litigating parties is of a higher order than the power to declare a contract or a judicial verdict null and void.

Clause 4 clarifies that no federated State is allowed to emit its own currency (stemming from Federalist Paper no. 44 by James Madison). This is a firm warning to groups who propose to leave the Eurozone and to return to their previous national currency. Neverthe-

less, the States of the European Federation could emit bonds and other debt papers to finance their deficit spending. In other words, we propose to establish a financial system in the Eurozone similar to the system of the USA.

Clause 5 determines that imposing imposts on import and export is not allowed unless permitted by European Congress. Yet they may charge a sum in order to compensate their expenses with respect to the inspection of imports and exports. The net yield of allowed imposts goes to the Treasury. This aspect may receive a high ranking on the agenda of the – as proposed by us – six Senators (without the right to vote) representing the ACP-countries in the European Senate.

Clause 6 emphasizes once more that defense is a federal task. That is to say that Congress may rule that a State can host part of the federal armed forces, ready to operate in cases of emergency.

Section 5 – Constraints for the European Federation

1. *No money shall be drawn from the Treasury but for the use as determined by federal law; a statement on the finances of the European Federation will be published yearly.*
2. *No title of nobility will be granted by the European Federation. No person who under the European Federation holds a public or a trust office accepts without the consent of the European Congress any present, emolument, office or title of any kind whatever, from any foreign King, Prince or foreign State.*

Explanation of Section 5

We think that this Section speaks for itself.

This is our version of the legislative branch of the European Federation. We followed as much as possible the text of the American Constitution. Thus it is thinkable that words or sentences – vital for a federal Europe – may be lacking or are not properly clarified. Or we may deal with matters that are not necessary for a European Federation. That is why we – as is the case for the remainder of our draft Constitution – are open to additions and improvements by people who are more experienced in this area.



Klinkers & Tombeur, April 2013

PAPER 23

Paper no. 23 deals with the constitutional Articles IV and V of the Executive Branch. This refers to the powers and tasks of the President, the Cabinet and the public administration. Klinkers and Tombeur deviate from some clauses of the American Constitution, in particular where the election of the President is concerned. Besides that, they present an interesting proposal for the composition of the President's Cabinet of the European Federation. They also adopt some essential aspects of the Swiss direct democracy.



Desiderius Erasmus

FAQ 28: How does your Constitution safeguard democracy?

Through a system of two Chambers: the House of the Citizens and the House of the Senate. The first House will be elected directly by the federal Citizens, qualified to vote, whereby the Federation is one constituency. Thus a German can vote for a Spaniard and the other way around. The Senate is appointed out of and by the Parliaments of the member states of the Federation. The President is also elected by the people. Both Parliament and President have a democratic mandate. That is real dualism, which is not possible within a parliamentary democracy, where the legislative power formally possesses the ultimate power, but in the actual practice of all European countries, walks on the leash of the executive power. See Papers no. 17 and 22.



MARIO MONTI

"I believe that reforms will not really take hold if they do not gradually come into the culture of the people."

PAPER 23

In this Paper we continue drafting the Constitution for the European Federation. The following Articles stem partly from the original American Constitution, partly added to and improved by us from Amendments supplemented to the American Constitution after 1789. Again we allow ourselves to improve the readability of the structure of the American Constitution; this time by separating the organization of the executive power from the duration and vacancy of the (Vice) Presidency.

Article IV – Organization of the Executive Branch

Section 1- Establishing the offices of the President and the Vice President

1. The executive power is vested in the President of the European Federation. He/she is in office for a term of four years, together with the Vice President who shall also be in office for a term of four years. The President and the Vice President are elected as a duo by the Citizens of the European Federation, which has to that goal one constituency. They are re-electable – forthwith – for one term.

2. *The election of the President and the Vice President of the European Federation will be held on the third Friday in the month of October; the first election in the year 2016. To bridge the period between ratification of the Constitution of the European Federation and the first election of its President and Vice President the European Congress appoints from its midst an acting President. This acting President is not electable as President, nor as Vice President, at the first Presidential election of the European Federation.*
3. *Electable for President or Vice President is any person who, at the moment of his candidacy, to be set by federal law, has reached the age of thirty five years, who has the nationality of one of the States of the European Federation and who has been registered as a Citizen of one of the States of the Federation for at least fifteen years.*
4. *The President receives a salary for this position, set by the European Congress. The salary shall not be increased nor decreased during the term of his/her presidency, and he/she does not receive any other compensation or in kind from the European Federation, nor from any individual State of the Federation, nor from any other public institution within or outside of the Federation, nor from a private institution or person.*
5. *Before the President enters the office he/she will pledge, in front of the Chief Justice of the Court of Justice, in the month of January in which the office begins, the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the European Federation and shall to the best of my ability preserve, protect and defend the Constitution of the European Federation.*

Explanation of Section 1

Clause 1 states that the executive powers are vested in the President. It is important to emphasize that these powers are given to implement the decisions by the Houses of Congress. In order to keep an eye on this execution Congress applies its 'Congressional Oversight' as mentioned earlier. Moreover, the first clause determines that we – contrary to the American Constitution – do not opt for the system of Electoral Colleges per State, with its principle of 'the winner takes all'. Clause 1 establishes direct elections by the Citizens of the European Federation by a majority vote (50%+), whereby the territory of the Federation is one constituency. Thus we opt for the system of the 'popular vote' whereby the candidate who gets – Federation-wide – the majority of votes, wins. Regularly there are appeals in the USA to adopt this system rather than the system of the Electoral Colleges, because it has happened several times (for instance with George Bush versus Al Gore) that a candidate gained the majority of the popular vote (Al Gore) but not the majority of the Electoral Colleges. The President and the Vice President serve a maximum of two terms.

Clause 2 differs considerably from the American Constitution. That Constitution determines that Congress sets the date for the Presidential elections. For the USA this is adequate. But with respect to the extreme importance of a Federal Europe to reposition itself rapidly and effectively within the game of globalizing powers (see Paper no. 9) it seems wise to parallel the terms of the American and the European President – from the beginning. Thus,

these two leaders can get adjusted to each other's way of working and, when necessary, cooperate without a breach of continuity which could well happen should the terms not coincide. Before those two remember each other's telephone number valuable time will be lost. Their cooperation is even more necessary since it appeared in 2013 that the USA and the EU wish to embark on a completely new trade relationship. Aside: in the USA the day of the Presidential elections takes place on the Tuesday after the first Monday in November. Generally that is between 2nd and 8th November. In 2012 it was on 6th November. Taking into account European electoral traditions and festivities in the month of November, we opt for the third Friday in October, as of the year 2016.

Contrary to the American Constitution our Clause 2 states that the European Congress appoints – from among its midst – an acting President for the period between the ratification of the European Federation and the first Presidential election. He or she may not run in the forthcoming first Presidential election, for the reason that the candidates for the first Presidential election should have a level playing field on which to do battle. Allowing the acting President to be electable could influence negatively the chances of other candidates. Furthermore, it seems wise to appoint someone in the months or even years before the first Presidential election without a personal interest in being elected. In that period a businesslike and professional approach to the young Federation is necessary.

Clause 3 rules that a candidate is only electable if he or she has a strong bond with the European Federation, namely by having the nationality of a State of the Federation or having lived (registered) for a substantial number of years in one of the States.

Clause 4 secures the yearly salary of the President (in the USA at present $ 400.000,-, later in Europe € 400.000,-) for the complete term of his or her office. Next to that salary he/she is not allowed to accept other incomes or payment in kind from public or from private institutions or people, other than incomes from capital that he/she had acquired prior to taking office.

Clause 5 deals with the Presidential oath or affirmation, to be declared in front of the Chairperson of the Court of Justice of the European Federation. We copy here the American procedure. In the USA this is, with a hand on the Bible, a four-yearly event, organized in the form of a huge celebration. In January 2013 the world was able to enjoy this twice; once in a small gathering in the White House, the following day officially in front of the Capitol. Moreover, the words 'So help me God', are not to be found in the American Constitution. These are added to the oath on his own authority – or so is generally assumed – by the first President George Washington.



Section 2 – Vacancy and end of the term of the President and the Vice President

1. *The President and the Vice President will be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors. In case of removing the President from office, his/her death or his resignation, the Vice President will become President.*
2. *Whenever there is a vacancy in the office of the Vice President the President will nominate a Vice President who will take the office upon confirmation by a majority vote of both Houses of the European Congress.*
3. *Whenever the President transmits to the President pro tempore of the Senate and the Chairperson of the House of the Citizens his/her written declaration that he/she is unable to execute the powers and duties of the office, and until he/she transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.*
4. *Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Chairperson of the House of the Citizens their written declaration that the President is unable to execute the powers and duties of the office, the Vice President shall immediately assume the powers and duties of the office as Acting President.*
5. *Thereafter, when the President transmits to the President pro tempore of the Senate and the Chairperson of the House of the Citizens his/her written declaration that no inability exists, he/she shall resume the powers and duties of the office unless the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may provide by law, transmit within four days to the President pro tempore of the Senate and the Chairperson of the House of the Citizens a new written declaration that the President is unable to execute the powers and duties of the office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to execute the same as Acting President; otherwise, the President shall resume the powers and duties of the office.*
6. *The terms of the President and the Vice President will end at noon on the 20th day of January in the final year of their term. The terms of their successors will then begin.*
7. *If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President elect is unable to pledge the oath or affirmation for beginning his office, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified. The Congress may by law provide for the case of the*

death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Explanation of Section 2

The first five Clauses of this Section 2 almost all stem from American Amendment XXV, ratified in February 1967.

The first sentence of Clause 1 is the impeachment clause, used previously – in the context of the Watergate affair – to put Richard Nixon under such pressure that he resigned, after which his successor Gerald Ford granted him amnesty. This first Clause solves a problem that has been troubling America for a long time. Namely the question: if the Vice President takes over office from the President is he then 'Acting President' – thus only possessing Presidential powers – or is he full President? Well, the latter has been the case since 1967: the Vice President becomes President. On this basis Gerald Ford became President following Nixon's resignation.

Clause 2 guarantees the continuity of the Federal government. A Vice President can be appointed by the President – provided consent is given by the European Congress – if due to whatever reason a Vice President is unavailable. Should this be the case the Vice President's election by the people is not required.

Clauses 3-5, dealing with the President's inability to govern, may speak for themselves. Clauses 6-7 stem from the American Amendment XX as ratified in January 1933.

Article V – Powers and tasks of the President

Section 1 –Presidential powers

1. *The President is commander in chief of the armed forces, security agencies and militia of the European Federation.*
2. *He/she appoints Ministers, Ambassadors, other Envoys, Consuls and all public officials of the executive branch of the European Federation whose appointment is not regulated otherwise in this Constitution and whose offices are based on a law. He/she removes from office all public officials of the European Federation after their conviction of treason, bribery or other high crimes and misdemeanors.*
3. *He/she may seek the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.*
4. *He/she has the power to grant amnesty and grace for offenses against the United States, except in cases of impeachment.*
5. *He/she has the power to make treaties, by and with the advice and consent of the Senate, provided two thirds of the Senators present concur.*

6. He/she nominates and appoints judges of the Constitutional Court of Justice and of Federal Courts, by and with the advice and consent of the European Congress.

7. He/she organizes once per year a consultative referendum among all Citizens of the European Federation with the right to vote in order to obtain the opinion of the European people with respect to the execution of the federal policy domains. The referendum shall be executed under the umbrella of the European Digital Agenda.

8. He/she organizes a decisive referendum among all Citizens of the European Federation with the right to vote on the question of whether or not the European Federation should accede to, or should co-establish, an international organization with compulsory regulating power, after advice of the Senate about this acceding or co-establishing.

9. He/she may organize a referendum among all Citizens of the European Federation with the right to vote on a draft law that has met objections by the President according to Article III of this Constitution and about which the Houses of Congress after these presidential objections do not come to an agreement during two years. The term of two years begins as from the first plenary vote in the House that did not initiate the draft law.

Explanation of Section 1

The President of the European Federation fulfills two functions: he or she is Head of State and Leader of the Government. Besides that he or she is also Commander in Chief and the Supreme Diplomat.

Clause 1 makes the President Commander in Chief of the armed forces, security agencies and the militia. The right to declare war remains the power of the Congress of the European Federation. How is this dealt with in the USA? Since the Korean war, in the 1950s, it is generally accepted that the American President has a considerable say in deciding whether to send armed forces to war. Thus without previously requesting the explicit consent of Congress. Furthermore, the specific execution of that task has evolved since the United Nations, in the sense that the USA only participate in wars (named policing actions) under a UN-mandate. Except for the second war in Iraq. It is assumed that operating under a UN-mandate implies the tacit consent by Congress. We understand this broad interpretation in the USA of the Presidential power with respect to military issues, because critical situations often require quick decisions. This will be no different for the European Federation.

Some military details aside. The Americans spend twice as much on defense as the Europeans. Moreover the ratio – roughly speaking – between investments (25%), personnel (50%) and exploitation (25%) is far more balanced. In Europe countries like Belgium, Italy and Greece spend more than 70% of the defense budget on personnel. That results in less investments. Besides this, the 27 EU-member states suffer from fragmentation. There are in Europe, to give one example, over twenty different combat vehicles; decisions on military issues are taken on the basis of national interests without taking into account surpluses and shortages within the NATO

and the EU as a whole. Of the almost two million European troops the EU can make only 70.000 operational.

Clause 2 give the President the right to appoint offices of the executive branch. He/she appoints Cabinet Ministers, the diplomatic personnel and other government officials whose appointment is not regulated otherwise. In America the appointment of these people – thus also of Ministers – goes via the advice and consent of the Senate. The House of Representatives does not have a say in this. The fact that the Senate has a say in appointing the Cabinet's Ministers makes the legislative power co-responsible for the operating of the executive branch. We find this strange in the context of the Presidential American system. It seems to us an universal rule that the person who has to perform a difficult job should have the autonomous power to decide with which team he or she wants to face the challenges. Therefore we find that it should be the autonomous decision of the President of the European Federation to nominate and appoint the members of the Presidential Cabinet, the public officials of all federal departments and agencies and the federal diplomats: they all are, under his or her leadership, responsible for the executive governance of the Federation, including the execution of federal laws, made by Congress. We leave, though, in Clause 6 a role for Congress with respect to appointing members of the judicial branch.

In the American Constitution our Clause 3 is part of the previous Clause 2. We think it better to separate this from the commandership because the power to ask the opinion of the Ministers does not refer particularly to military matters, but to all aspects of their work. Important, though, is the fact that the European Constitution herewith confirms that the President will have a Presidential Cabinet. We deal with this element later.

Clause 4, the Presidential power to grant amnesty and grace, is a fixed part of any Constitution. We have also separated this sentence from Clause 1.

Clause 5 grants the President the right to create treaties. However, this requires the advice and consent of two thirds of the Senate. This implies – as is the case in the USA – that the Senate may speak about this subject each time it wishes to do so, before and after treaty negotiations. This Clause does not prevent the member States of the Federation from retaining the power to make treaties, provided that these treaties fall within the context of their specific policy domains. This is an aspect of the vertical division of powers we have addressed in Article III. Therefore, both levels of government have a diplomatic and consular corps. This is already the case in the EU with respect to treaties and diplomats. It is possible to divide tasks between consuls of both levels. For instance by giving federal consuls the exclusive power to assist (commercial) corporations. In our vision each State keeps the power with respect to its own national legislation and thus grants assistance, abroad, to natural persons with the nationality of that State. The nationality

of a State will be combined with the citizenship of the Federation. We will discuss this in the following Paper.

This might be a good moment to make an observation about the concept of 'proportionality'. This is an important issue within the present intergovernmental EU-system. It deals, formulated simply, with the question as to what extent the EU – or a national EU-State – may execute the same power. This concept is directly related to the fact that the EU-treaties cover so-called 'shared powers'; implying that the same power may be executed by both the EU and an EU-State. This evokes the question: how far can either party go in executing that shared power? This has proved to be unworkable in practice, because the effective application of the principle of proportionality is measured against the principle of subsidiarity: leave to the States what the States themselves can do best. Due to the hierarchical decision making of the European Council the already severely crumbling subsidiarity has invalidated the concept of subsidiarity completely; the interpretation problems are insoluble. A federal system, however, does not have this problem at all. In a Federation 'shared powers' is unthinkable, because of the vertical division of powers, the essence of a federal organization. A Federation has only 'shared sovereignty': the States are 100% (thus not partly) sovereign in all powers that have not been transferred to the Federation. And the Federation is in its turn 100% (thus not partly) sovereign in all of the limitative enumerated powers that have been transferred to the Federation once again: a Federation resembles absolute subsidiarity, and therefore this concept is not to be found in our draft Constitution. Nor the nonsense of proportionality.

Clause 6 deviates from the American Constitution in the sense that the Presidential power to appoint judges in the Court of Justice and in the Federal Courts of the European Federation not only depends on the Senate's consent, but on that of the whole Congress, thus on the consent of the House of the Citizens as well. By Federal Courts we mean the courts, established by law by the Congress and which in the hierarchy fall directly under the Court of Justice. We wish – following the Swiss example of composing federal courts – to attribute this important power to both Houses of the Federal Congress. Yet with one difference, in the sense that the President also plays a role by nominating the candidates, as is the case in the USA. Due to the fact that the federal courts and possible other federal courts should enforce the uniform execution of federal laws throughout the Federation we think that in this way their independent operation is better secured, especially with respect to the States whose laws have to give way to federal laws. Furthermore, the federal courts should get the fullest trust of those who have made and will make federal laws, together with the people who have to execute them, the President and his/her Cabinet; and thus can assess if the candidates for such courts have sufficient expertise.

Clauses 7, 8 and 9 are not to be found in the American Constitution. By referring to Paper no. 20, where Tombeur elaborates on ex-

amples of direct democracy in Switzerland, we introduce three kinds of referenda which must or may be organized by the President and in which all Citizens with the right to vote in the Federation can participate.

We realize that Europe does not have good experiences with regard to referenda about itself. Until now they have been characterized by resistance against the intergovernmental system. In this respect we refer to the detailed analysis by Wim Voermans in his contribution 'Van Europa voor de burger naar Europa door de burger' ('From Europe for the citizen towards Europe by the citizen') in the Dutch Jaarboek Parlementaire Geschiedenis 2012 (Yearbook Parliamentary History 2012) with the evocative title 'De Verenigde Staten van Europa' ('The United States of Europe'). Voermans gives an accurate description of the occurrence and proceedings of the referendum in which the Dutch people in 2005 rejected the draft of a European Constitution. As did France. The ensuing administrative vacuum was filled by the legal monster, named the Treaty of Lisbon.

In Paper no. 14 Klinkers explained how difficult it was – before and during the Convention of Philadelphia – to deal with the Aristotelian concept of 'democracy'. They considered the literal application of that concept – in the sense of every citizen may co-decide about everything – organizationally impossible. They were also afraid that due to stupid or misguided citizens the decision making would be bad. Once more some sentences that clarifies their point of view: *"Equally discredited was 'mere democracy' which still meant, as Aristotle had taught, rule by the passionate, ignorant, demagogue-dominated 'voice of the people'. This was sure to produce first injustice, then anarchy, and finally tyranny."* That is why they decided, after extended debates, to opt for the concept of representative democracy, in their words 'a republican type of government'. The Swiss, however, in the midst of the 19th century dared to enrich their version of the American Constitution with forms of direct democracy. Up until today. Apparently this works perfectly. We want to see this also included in our draft federal Constitution. That is why we introduce three types of referenda. Thus we wish to eliminate the negative connotations regarding European referenda, taking into account that since 1950 the Citizens could hardly voice their opinion officially, let alone decide about the do's and don'ts of intergovernmental Europe. EU-governance since then rather resembles the enlightened despotism of the Ancient Regime – governing for the Citizens, not by the Citizens. We find that there is no rational reason to account for this democratic deficit. Never in Europe's history have there been, since World War II, so many, so well-educated and well-informed people. Nevertheless they are – referring to the American author Noam Chomsky – treated as under-aged children. We find that in 2013 it is more than ever necessary – especially in this year of the European Citizen – to propose the referenda in the Clauses 7, 8 and 9 of this Section.

In Clause 7 we propose that the President of the European Federation must organize once per year a consultative referendum about

the quality of the federal government. Herewith he asks the Citizen's opinion about the performance of the policy domains of the federal body. The result does not bind the President, nor Congress or any other federal institutions. However, with the help of this obligatory consultation of the people regarding the Federation, governmental shortcomings can be identified and taken care of rapidly and effectively. This is a powerful instrument for European nation building. The Euro Commissioner who momentarily has the task of carrying out the Digital Agenda for Europe, Neelie Kroes, could already now, in the context of the design of a European-wide digital infrastructure, consider establishing such facilities to make the organization of an electronic referendum feasible.

In order to create a European public space we propose in Clause 8 that the President organizes a referendum among the Citizens and the States to decide upon the question as to whether the Federation Europe should join or co-establish an international organization with regulatory powers. Due to the fact that such regulations may influence the powers of the States – global negotiations have their own specific dynamics and global organizations have their own specific finality outside the realm of European powers – we would like to have them participate in this decision making. In this we are inspired by the Swiss Constitution. With the World Trade Organization as an example, the creation of such international organizations may be necessary to deal with, for instance the problem of climate change. Whenever a decision on this subject is required, the President is obliged to organize a referendum. The required advice – in advance – by the Senate to the Citizens and the States resembles the Senate's role with respect to making treaties, as described in Clause 5.

The third kind of referenda under presidential powers in Clause 9 – again stemming from the Swiss Constitution – gives the President the option to organize a decisive referendum when the Houses of Congress, after objections by the President to a draft law of one of the Houses, continue to disagree on that draft. This is called an 'arbitration referendum'. It is optional. The President decides whether such a referendum will be presented to the Citizens. However, their decision is binding. Even though the European Constitution contains the possibility of final decision making by Congress, the system of checks and balances can lead to a deadlock when the parties involved obstinately refuse to compromise. When these deadlock continue it is necessary – as an ultimum remedium – to put the ultimate decision makers at work: the Citizens. The Citizens precede the Federation, the Federation is the possession of the Citizens, not the other way around. The Citizens are the alpha and the omega: constituting the Federation is vested in the Citizens, thus is vested in them the solving of problems created by the institutions of the Federation. If functionaries of the Federation use the stately system to organize non-decision making we have to fall back on the people who established the Federation, the Citizens. If the USA had a referendum like this, the deadlock of the 'fiscal cliff' would have been solved quickly.

Section 2 – Presidential tasks

1. *The President gives the European Congress once per year information about the State of the Federation and recommends measures that he judges necessary.*
2. *The President may on extraordinary occasions convene both Houses of the European Congress or either of them, and in case of disagreement between them with respect to the time of adjournment he/she may adjourn them to such time as he/she thinks proper.*
3. *The President receives Ambassadors and other foreign Envoys.*
4. *The President takes care that the laws are faithfully executed.*
5. *The President commissions the tasks of all government officials of the European Federation.*

Explanation of Section 2

This Article is a single text in the American Constitution. We think it improves its readability if we split it into five clauses.

Clause 1 resembles the US 'State of the Union'. Until Woodrow Wilson's government (1913-1921, creator of the League of Nations) this declaration came in written form. Since Wilson it is presented by appearing personally before Congress. This is an executive task explicitly attributed to the President by the Constitution. He/she has to bring forward all he/she deems appropriate as Head of the Nation, as Leader of the Government, as Commander in Chief, as Chief Diplomat etc. Besides this it is the President's duty to put forward measures for Congress' consideration he/she thinks necessary and expedient. This is the so-called 'Recommendation Clause'. We wish to adopt this way of proceeding in our draft federal Constitution.

Clause 2 gives the President the right to convene both (or one of the) Houses in extraordinary circumstances. The American Constitution does not clarify how we should interpret 'extraordinary'. It has happened 27 times. The last time under Harry Truman, Franklin D. Roosevelt's successor, at the end of World War II.

Clause 3 entails among others the stipulation that all foreign Ambassadors present their credentials in a meeting with the President personally.

Clause 4 is called in the USA the 'Take Care Clause' or the 'Faithful Execution Clause'. It is in essence an assignment for the President to execute laws carefully even if he/she disagrees with them. This does not only concern the execution itself, but also the realization of the intrinsic goals of Congress: that is where the word 'faithful' comes in. In the USA this clause is highly esteemed and therefore the basis of a strong teleological attitude among dignitaries and citizens. An attitude that expresses itself in a strong curiosity as to *"What would the founding fathers of the Constitution have meant by this or that? What goals does Congress want to achieve with this legal*

clause?" It is recognized, however, that the President possesses ample powers to interpret the goals of the laws maker. However, always with the Supreme Court as a watch dog to declare Presidential measures unconstitutional: *"The Constitution is what the judges say it is."*

In the context of Clause 4 we would like to stress again that not only the American Congress possesses so-called 'implied powers', but the President as well, including the 'Presidential Executive Orders'. This has been dealt with in Paper no. 14, so we leave this aside. But not without mentioning that President Obama's measures in January 2013 under the name of 'gun control' belong to the domain of these 'Presidential Executive Orders'.

Clause 5 gives the President the power and duty to take care of clarifying what kind of work has to be undertaken by each public official of the federal Government.

Special explanation of Article V, Sections 1, Clauses 2 and 5

We return now to the Clauses 2 and 5 of Section 1: the power of the President to seek advice from the heads of the departments and respectively his/her power to appoint Ministers. This is regarded as the constitutional basis for the President having a Cabinet, the so-called 'The President's Cabinet'. The Constitution, however, does not determine the number of Ministers.

The question we need to face is: *"How many Ministers should the President of the European Federation have?"* To answer this question we could – looking at Article III, Section 2 (the list of limitative enumerated powers of European Congress) – weigh the dominating policy domains. However, we are afraid to do so. Such weighing would probably lead to endless debates, drifting away from the principles of good governance. Especially because it should be ruled out, in our view, that each participating State by definition receives a representative in the executive government, as is the case in the present European Commission. Ministries of the Government of the European Federation should not be divided per country (as is at present the case with one Commissioner per State in the European Commission) but on the basis of content, i.e. Traffic or Defense.

We propose to solve this issue in a simple way: we follow (with two exceptions) the policy domains of the Cabinet of the American President. The same reasoning applies to our proposal of organizing the election of the European Federation's President around the time of the US President's election: create as much homogeneity as possible between both Federations in order to be able to do business with each other quickly and effectively.

These thirteen Ministers of European Federation have an American colleague:

1. The Minister of Foreign Affairs (Secretary of State): responsible for the European Federation's foreign policy. That is to say: the

Member States of the Federation keep, with respect to their own policy domains, their own foreign policy with their own Ministers of Foreign Affairs as is already the case in the EU and in the Belgian Federation.

2. The Minister of Finance (Secretary of the Treasury): responsible for the European Federation's financial policy, including the federal budget and federal taxes. Aside: these powers and the common single €-currency, in our view, lead to the establishment of a European Central Bank resembling the American Federal Reserve Board.
3. The Minister of Defense (Secretary of Defense): responsible for the federal armed forces in all their sections: army, navy, air force and militia.
4. The Minister of Justice (Attorney General): responsible for matters of a judicial nature.
5. The Minister of the Interior (Secretary of the Interior): in America this Minister is not comparable with the Ministers of the Interior as we are familiar with in Europe. That Minister deals with matters of transnational physical planning, with an emphasis on sustainability.
6. The Minister of Agriculture (Secretary of Agriculture): responsible for agriculture and fisheries, as well as with food production, distribution and supply, and with food safety (healthy food).
7. The Minister of Economic Affairs and Trade (Secretary of Commerce): responsible for the economy, trade, competition and intellectual property.
8. The Minister of Labor (Secretary of Labor): responsible for employment and working conditions.
9. The Minister of Public Health and Social Affairs (Secretary of Health and Human Services): responsible for public health, social facilities and poverty alleviation.
10. The Minister of Housing and Urban Development (Secretary of Housing and Urban Development): responsible for housing policy and the development of urban areas.
11. The Minister of Traffic and Transportation (Secretary of Transportation): responsible for all modes of traffic and transportation between the States of the Federation, including transnational infrastructure.
12. The Minister of Energy (Secretary of Energy): responsible for energy production and distribution, furthering clean energy and energy-saving measures, and the problem of climate change.
13. The Minister of Homeland Security (Secretary of Homeland Securities): responsible for the security of the interior, fighting terrorism within the territory of the Federation and disaster management.

Two Ministers of the American Cabinet seem inappropriate within the European Federation:

The Secretary of Education: we think that taking care of education and related matters as, for instance, vocational training, is a task of the States, not of the Federation.

The Secretary of Veteran Affairs: insofar this would be a relevant policy domain within the European Federation we think it more appropriate to see this as a joint task for the Minister of Defense and the Minister of Public Health and Social Affairs.

Instead we propose:

14. The Minister of Science and Innovation: responsible for supporting fundamental scientific research, taking care of innovation in areas like electronic traffic and products and the creation of new educational systems.
15. The Minister of Cultural Relationships and Migration: responsible for taking care of good relations between peoples of the respective States, of the interests of regions and specific populations with their own language and culture, and with migration policy.

See here the fifteen federal Ministers as the members of the Cabinet of the President of the European Federation. Thus, no 27 or more Commissioners to satisfy the national interest or the national honor of each member state of the European Union. Next to this Cabinet the American President possesses a certain number of offices within and outside of the White House. We leave this aside for now.



Klinkers & Tombeur, April 2013

PAPER 24

Paper no. 24 covers the Articles VI-X of the draft Constitution for a federal Europe. After dealing with the third branch of the trias politica, the Judiciary, we will address the relations between Citizens, the Federation and its Member States, as well as the method for changing the Constitution, transitional measures and the process of ratification. Herewith the draft Constitution for a federal Europe ends.



Thomas More

FAQ 29: Why would a German vote for a Spaniard? How does he know that this would be a good choice?
He does not need to know that. Elections have to take place through transnational or trans-European political parties. Voters cast a vote on the candidate of their favorite political party. Thus, it is a list-system. It is the responsibility of the political parties to include federation-wide adequate candidates in the list. By offering voters the best options to choose the right candidate. For instance by also listing the candidates in a woman-man-woman-man ratio. Thus 50-50% gender equality. See Paper no. 22.



JOACHIM GAUCK

"No European nation, no European state, can grow without the consent of its citizens. The pace and depth of European integration will ultimately be determined by them … What Europe needs now are not doubters, but standard-bearers, not ditherers but people who have a hands-on approach. … For me, more Europe means more European civil society."

PAPER 24

We conclude our draft Constitution for the Federation Europe with the Articles VI-X. Again the raw ingredients of this draft stem from the American Constitution, flavored to the European taste.

In this Paper the third branch of the trias politica, the Judicial Branch, is discussed. As mentioned in Paper no. 21 we cannot oversee if all institutions of the European Union, including the Court of Justice, will be part of the new Federation. This would be possible when applying Article 20 of the Treaty with regard to the European Union: a minimum of nine Member States engage in a stronger cooperation (thus in our view a Federation), provided that they do not hamper the free internal market (the customs union, single currency, competition and commerce). If this would indeed be possible, there will be no need for the Federation to establish a Supreme Court. The present EU-Court of Justice would fulfill that function. In case the Federation will not be considered a stronger form of cooperation as indicated in Article 20 of the aforementioned Treaty, it will be possible for Citizens and States to first leave the EU (with the use of Article 50), in order to re-enter the EU as a Federation (through Article 49). In any case, the European

Federation is open to the accession of other EU-Member States, as explained previously.

First we deal with the Judicial Branch, with the Court of Justice at the top. In our view a system of lower federal courts is needed in the nine or more federal States. Therefore we describe here in broad terms what the American judicial system looks like. Following this, we will present our Articles on that subject.

As early as 1789 American Congress established by law that the federal Judicial Branch should consist of three layers. The first layer is the Supreme Court, under which fall (at present) nineteen federal courts of appeal against verdicts of the 49 federal district courts in the third layer. Besides these three-layered federal courts, the States themselves have their own courts and thus also a Supreme Court per State.

The Congressional power to establish federal courts also implies the power to abolish them. This may happen when the President and Congress clash, in case the majority of one of the Houses does not belong to the President's political party. In order to prevent the President from abusing his/her power to appoint judges (of course following the Senate's advice and consent), by only appointing candidates from his/her own party, a Senate's opposition may block this appointment. If such a lower federal court suffers from a lack of judges for a considerable amount of time (because the previous ones have retired or left for different reasons), Congress may decide to close that court.

The Supreme Court rules in cases relating to the federal government, in conflicts between States and in the interpretation of the Constitution. Even though the Constitution does not in so many words grant the Supreme Court the power to declare laws unconstitutional, in a conflict taking place in 1803 the then presiding Chief of Justice established or demanded this power for the Supreme Court. This so-called 'judicial review' implies the Supreme Court's power to establish that a law made by Congress or a measure from the executive branch is in breach of the Constitution. Herewith the meaning and effect of such a law or measure is nullified and this sentence serves as a precedent for future cases of this kind. The Supreme Court is the court of appeal for the decisions of the nineteen federal courts of appeal.

The judges of the lowest level, the federal district courts, can deal with conflicts regarding the federal system and in issues between parties not residing in the same State. Verdicts issued by these courts may be appealed by the nineteen courts of appeal. These federal courts thus have their basis in Article III of the American Constitution (in our draft: Article VI); therefore they are called 'constitutional courts'.

The courts of these three layers possess general jurisdiction. They deal with penal affairs as well as with civil litigations. Besides this three-layered structure there are special courts, for instance for bankruptcy (Bankruptcy Court) or taxes (Tax Court). However, these have a different status. The Bankruptcy Courts are considered to stand below the district courts, and therefore do not belong to Article III of the American Constitution (our draft Article VI). Their judges are not appointed for life and their salary may be adjusted. In addition, the legal basis of the Tax Court is not Article III, but Article I, Section 8 (in our draft: Article III). It is a so-called 'legislative court'. Please note: the American Constitution grants Congress on two counts – Articles I and III, in our draft: Articles III and VI – the power to establish courts.

Besides operating as a court of appeal, the American federal Supreme Court rules in issues relating to interpreting the Constitution and treaties, and in cases relating to American Ministers, or Ambassadors and Consuls of foreign countries.

Federal judges have a lifetime-appointment. This means that they remain in office until they die, resign voluntarily or retire. In case of a serious crime the impeachment procedure is applicable.

Next to this three-layered judicial branch the States themselves also have courts. This makes the system rather complicated, because it may occur – in certain circumstances – that federal courts meddle in conflicts on a State level, and the other way around. The State courts administer justice on the basis of State laws. Thus also following the judicial procedures of that State. Each State has its own Supreme Court, which in principle is called upon as a last resort. However, in many cases verdicts of that State Supreme Court may be appealed by the federal Supreme Court. A State Supreme Court is only bound by constitutional interpretations of the federal Supreme Court, not by judgments of lower federal courts.

The American Constitution does not determine the number of federal Supreme Court judges. In the USA this court consists of nine people: the Chief Justice (chairperson) and eight members, appointed by the President, following the Senate's advice and consent. This Supreme Court does not have separate Chambers; it always rules jointly, by simple majority vote. The Supreme Court has always rejected pleas for installing (specialized) Chambers, arguing that in that case there would be more than one Supreme Court. Something to ponder, not only with respect to the system of separate chambers in judicial colleges in European countries, but also within parliamentary systems dividing the people's representatives into committees with final decision-making powers: in these cases a country possesses as many parliaments as there are committees with such decision-making powers.

Now we start to discuss the respective Articles of our draft federal Constitution.

Article VI – The Judicial Branch

Section 1 – Organization

The judicial power of the European Federation is vested in a Constitutional Court of Justice. European Congress may decide to install lower federal courts in States. The judges of the Constitutional Court of Justice as well as those of the lower federal courts hold their office as long as their conduct is good. For their services they receive a salary which during their office cannot be reduced.

Explanation of Section 1

The American Constitution states merely that there should be a Supreme Court. Its judges are to be appointed by the President – we copy this for the European Federation, but following the consent of both Houses of the European Congress – as discussed in Paper no. 23. It is up to the President to decide how many judges he/she wishes to appoint.

It is for the European Congress to decide if there should be lower federal courts below this Constitutional Court of Justice, the so-called 'constitutional courts', next to and separate from the State courts. Here we draw from what is stated in the limitative enumeration of powers of Congress in Section 8 of the U.S. Article I: that it may decide to install lower courts. Those courts, however, have other powers (as mentioned previously) than the federal courts of the American Article III. Those of the American Article I are called 'legislative courts' (a type of administrative court, for instance the Tax Court), whose verdicts may be appealed at the 'constitutional courts' of the American Article III, barring exceptions. Thus we adopt this American system: there should be one Constitutional Court of Justice for the European Federation – potentially the EU-Court of Justice in case the Federation is allowed to use the aforementioned EU-procedure of 'strengthened cooperation' of Article 20 of the Treaty concerning the European Union, one of the two sub-treaties of the Treaty of Lisbon. It is up to the European Congress to decide if and what other federal courts should be installed.

The requirement of good conduct in Section 1 implies that judges are allowed to stay in office until retirement, unless their conduct should lead to impeachment by the European Congress. In the USA this has happened fourteen times. Furthermore, it is determined that their salary may not be reduced, to avoid undue pressure on their independent judgment; though it may be increased.

Section 2 – Powers of Federal Courts

1. The federal judicial branch has the power to judge in all conflicts arising under this Constitution; with respect to all laws of the European Federation; to treaties made, or that shall be made under the authority of the European Federation; to all cases affecting Ambassadors, other Envoys and Consuls; to all cases of a maritime

nature; to all cases in which the European Federation is a party; to controversies between two or more States, between a State and Citizens of another State, between Citizens of several States, between Citizens of the same State in matters of land in another State and between a State or Citizens of that State and foreign States of Citizens thereof.

2. *The Constitutional Court of Justice has the exclusive power in all cases in which only States, Ministers, Ambassadors and Consuls are party. In all other cases, as mentioned in Clause 1, the Constitutional Court of Justice is the court of appeal, unless European Congress decides otherwise by law.*
3. *Except in cases of impeachment, the trial of crimes, as determined by law, will be by jury. These trials will be held in the State where the crime has been committed. If they have not been committed within any State the trial will be held at such place or places as decided by law by European Congress.*

Explanation of Section 2

Section 2 deals with the powers of the federal courts. Even though the Constitution does not state this in so many words, these courts have the power to declare regulations and measures invalid on constitutional grounds. They are qualified to assess whether a law interferes with the Constitution, being the highest form of law. In the USA many disputes have arisen relating to this issue. Indeed, one may ask: who is the boss? If the legislature makes a law, this law applies to all. However, if a judge finds that a law interferes with the Constitution, this application is omitted. Federal judges, including those below the Supreme Court, may thus overrule the legislature.

Alexander Hamilton's clarification of this issue – in no. 78 of the Federalist Papers – remains the prevailing doctrine up until today: *"The interpretation of the laws is the proper and peculiar province of the [federal] courts. A constitution is, in fact, and must be regarded by the [federal] judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.*

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the legislature declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental."

We follow Hamilton in his reasoning that a Constitution is the most fundamental law of and for the people. Thus, this law has priority over other laws. This means that the Constitution is the judicially enforceable law of the highest kind in the European Federa-

tion. It is really 'a Constitutional Law', thus more than a 'Convention of the Constitution', or a moral-political agreement that cannot be enforced judicially – which is or has been the case in many European countries.

Clause 2 of Section 2 states that in conflicts in which one or more States, Ministers, Ambassadors and Consuls are the only litigating parties, the Constitutional Court of Justice has the exclusive power to rule, in first and final instance. This exception to the common principle of a distinction between first instance and appeal is based on the delicate nature of such cases, in which the immunity of States or of foreign civil officials within and outside of the European Federation is discussed.

Clause 3 of Section 2 introduces trial by jury to the European Federation – though, only for crimes determined by law. A thorny issue in many countries. We know the heated debates between advocates and opponents of trial by jury. Our argument to include this in our Constitution stems from the all-encompassing element of federal thinking: the Federation is of the people. If there is any doubt about the proper way of constitutional and institutional design it is wise to take the people as the point of departure. This is why we opt for trial by jury for certain crimes (as specified by law), assisted by professional magistrates.

Section 3 – High treason

1. *High treason against the European Federation shall only consist of levying war against the Federation, or of adhering to its enemies by giving them aid and comfort. No person shall be convicted of high treason without the testimony of at least two witnesses to the crime, or on confession in open court.*
2. *European Congress has the power to declare the punishment for high treason, but in no way a verdict of high treason shall lead to attainder or confiscation for the offspring of the convicted person.*

Explanation of Section 3

We assume that this Section does not need any further explanation.

ARTICLE VII – The Citizens, the States and the Federation

Section 1- The Citizens

1. *The Citizens of each State of the European Federation possess also the Citizenship of the European Federation with all the associated political and other rights. The Citizens of a Member State are also entitled to all rights and favors of the Citizens of any other State of the Federation.*

2. *A minimum of 300,000 Citizens of the European Federation is required to present a draft law to the European Congress. This draft describes only the contours of the goal or is a draft law. It will laid down as a People's Initiative at the Registry of the House of the Citizens. Congress and the President decide on the receptivity of the People's Initiative. The House of the Citizens deals with this People's Initiative according to its legislative procedures. Both Houses of Congress make a final decision regarding this proposal within two years of its registration. In case one House accepts a draft law as a result of this People's Initiative, while the other House rejects this draft or does not make a decision within the determined time period, the President presents the accepted draft law with the advice of each House regarding this People's Initiative to the Citizens of the Federation and to the legislatures of the States. In case the presented draft law is accepted, by a simple majority, by the Citizens and by the States, it will become federal law. Should there be no such majority this People's Initiative is rejected. Should neither House make a decision within the determined time period the President presents the People's Initiative to the Citizens of the Federation. They decide by simple majority whether the People's Initiative should be maintained. In case it is maintained the People's Initiative will be dealt with again by Congress. Congress makes a final decision carrying the overall meaning of the People's Initiative, under the supervision of the President. Congress determines by law the procedure for dealing with a People's Initiative without committing itself to substantive conditions.*

3. *A person convicted in any State of the Federation for high treason, felony or other crimes, fleeing from justice and found in a different member State, will at the request of the executive authority of the State from which he/she fled, be surrendered to the State with jurisdiction relating to that crime.*

4. *Slavery or any form of compulsory servitude, except in case of punishment for a crime for which the said person has been lawfully convicted, will be ruled out in the European Federation or in any territory under federal jurisdiction.*

Section 2 – The States

1. *Full faith and credit will be given in each State to the public acts, records and judicial proceedings of all other States. Congress may prescribe by general law the manner in which such acts, records and proceedings will be proved, and the effects thereof.*

2. *The States of the European Federation have the exclusive power to regulate matters of Citizenship. A State's Citizenship is valid in any other State of the Federation.*

3. *States may join the European Federation with the consent of a two-third majority of the Citizens of the acceding State, a two third majority of the legislative branch of the acceding States, a two-third majority of the Citizens of the Federation and a two-third majority of each House of the European Congress, in this order. The European Federation takes note of this consent and acts accordingly.*

4. *States joining the European Federation after the Constitution having come into force retain their debts and are bound to the laws of the Federation as of the moment of their accession.*

5. Any change in the number of States of the European Federation will be subjected to the consent of a two-third majority of the Citizens of the concerned States, a two-third majority of the legislative branch of all States and a two-third majority of each House of the European Congress, in that order.

Section 3 – The Federation

1. The European Federation will guarantee a representative democracy for each Member State and will protect them against an invasion and, at the request of the legislative branch, or that of the executive branch in case the legislative branch cannot convene, against internal violence.

2. The European Federation will not interfere with the internal organization of the States of the Federation.

3. The European Congress has the power to have at their disposal and make all necessary regulations with respect to the territory or other possessions belonging to the European Federation.

Explanation of Article VII

This first Article of a series of general rules to conclude the Constitution gives an elaboration of the federal system. It deepens the relations between the sovereign federal body and the equally sovereign States. The all-decisive formula of the vertical division of powers is laid out in the Constitution in five steps. The first step is to be found in Article I, Clause 1, stating that any power not granted explicitly to the Federation belongs to the realm of powers of the Citizens and the States. The second step is Article III, Section 2, enumerating these federal powers limitative. Step 3 is Section 3 of Article III, determining the borders – to protect the Citizens – within which these federal powers are to be applied. Step 4 is Section 4, determining the borders of the Federation and the States. Finally, step 5 in Article VII, further clarifying how some aspects of the relationship between Citizens-Federation-States have to be understood.

Section 1, Clause 1 states in the first sentence that each Citizen of a member State also possesses the Citizenship of the Federation. Thus a member State's Citizenship is associated with the Citizenship of the Federation; as soon as a person possesses the nationality of a State he/she automatically gains federal Citizenship. Citizens receive one passport, delivered by their own State, also mentioning the person's Citizenship of the Federation. This implies, among others, that he/she possesses the federally granted political and other rights and that he/she may claim, also outside of the Federation, assistance by diplomatic or consular services in matters for which they are authorized. The latter implies that these federal services have to enable federal Citizens living outside of the Federation to take part in federal elections of the House of the Citizens and that of the President/Vice President.

The second sentence of Clause 1, Section 1 prevents States from discriminating against Citizens of other States in favor of their own Citizens. Or, put more positively: all Citizens of the Federation have in all States the right to be treated equally, as a Citizen of that State. All Citizens, in all States of the Federation, have the right of so-called 'national treatment'.

Clause 2 of Section 1 regulates the People's Initiative to make a federal law, supported by Swiss constitutional examples at both the federal and cantonal level. For Europe this Clause is an innovation. The proposal of a draft law by a sufficient number of Citizens – 300,000 in the Eurozone is more than one per cent of the voters, taking into account that no constitutional voting threshold exists to obtain a seat in the House of the Citizens, only the electoral quota is determining this (see Paper 22) – is not a petition to introduce a subject to the political agenda or to request political institutions to make a law. This European People's Initiative goes much further than the EU-citizen's initiative, which gives the EU-institutions ample room for archiving such petitions and thus stopping them without yielding a result. This Clause puts pressure on Congress, pushed by the Citizens and the Parliaments of the States, to make a decision showing a respect for the People's Initiative, with the help of the President.

The third Clause of Section 1 regulates the transfer of suspects between States, stemming from the free flow of persons in the Federation. Clause 4 confirms the principle of the prohibition of slavery and hard labor.

Section 2, Clause 1 demands from the States that they recognize the judicial order of the other States of the Federation. The States do not submit each other's judicial order to an evaluation, but apply it in their State as well. This Clause prevents among others an administrative burden for Citizens, administrators and judges in relation to the use of official documents. Thus, in the European Federation the requirement of legalizing documents made by a State does not exist; these documents have legal validity in all other States of the Federation.

Section 2, Clause 2 means that only the States of the Federation are authorized in matters of nationality or Citizenship, with all associated political and social rights. Though we reiterate that the Federation will in some years become the authority on migration policies. Each State recognizes the Citizenship of another State and treats – according to its own legal order – the Citizens of other States as if they were its own Citizens. This implies that all member States come to the assistance of each other's Citizens – where needed abroad – via their diplomatic and consular services.

Section 2, Clause 3 offers the possibility of other States joining the Federation after its establishment. We have added Clause 4 to be clear about the conditions for accession: the acceding States keep

their own debts and have to apply, from the moment they join, the federal laws. Both conditions are set in order to not endanger the survival of the European Federation. For the record: this regulation applies to States joining after the Federation has come into force. For the founding member States Article X regulates that the Federation will support them with respect to fulfilling their debts and contractual obligations.

Furthermore Section 2, Clause 5 stipulates that each change in the number of States of the European Federation, as a result of the combination or splitting of States, is presented to the Citizens concerned, the Parliaments of all States and to European Congress. The reason for these different consents is the fact that the balance of power between the States and within the Federation will be changed, for instance institutionally through its effects on the composition of the Senate. This Clause is of great importance for regions that are striving to create a State of their own, as is the case for Catalonia in Spain, the French island of Corsica, the Scottish part of Great Britain and the Italian Padania.

Here we deviate from the American Constitution, which in its Article IV, Section 3 regulates that it is not allowed to create a new State within an existing State, nor to combine States of the Federation. We think that our proposal for the Constitution of a federal Europe is more suitable since Europe has not yet completely come to terms with its past, within or between States. Herewith we refer to the aforementioned regions, but also to the last Balkan war. A strategic part of Europe that is still waiting for a political solution and peace. A truce is not peace.

Section 3 emphasizes explicitly the sovereignty of each State, cosafeguarded by the Federation. Just as the Swiss Constitution safeguards the existence, the statute and the territories of the Cantons. Clause 2, stating that the Federation will not interfere with the internal organization of States is added by us, again inspired by the Swiss institutional system within which the Cantons organize themselves while the Federation protects their loyal constitutions. Thus the States of the European Federation retain the authority to establish the institutions they see fit. The fact that a State may be a Federation in itself – already the case in the Eurozone with Belgium, Germany and Austria – is no problem, provided that the federal organization of that State does not contradict the European Constitution. Clause 3 does not need further explanation because it stems from the functional sovereignty of the Federation over its territory. This does not affect the separate sovereignty of the connected States over their own territory. Thus, the European Federation does not interfere in the changing of borders between States.

Besides, we would like to make an observation with respect to Clause 2 of Section 3, the fact that the Federation does not have the power to interfere in institutional matters of States. The creation of a federal governing system will undoubtedly have effects on the way in which States are going to look at their own organizations because it implies a multi-level system of governance. For a thor-

ough analysis of this doctrine we refer to Caspar van den Berg in his book 'Transforming for Europe. The reshaping of national bureaucracies in a system of multi-level governance'.

Article VIII – Changing the Constitution

The European Congress is authorized to propose amendments on this Constitution, each time a two third majority in both Houses consider this necessary. If the legislative branches of two thirds of the States consider it necessary Congress will hold a Convention with the assignment of proposing amendments to the Constitution. In both cases the amendments will be a valid part of the Constitution after ratification by three quarters of the Citizens of the European Federation, three quarters of the legislative branches of the States and three quarters of each House of the European Congress, in this order.

Explanation of Article VIII

Article VIII finds a balance between the harshness of the original 'Articles of Confederation', which with their unanimity requirement blocked almost any change to the confederal treaty, and a too soft application of majority decisions which – under the pressure of the fickle political issues of the day – would lead to continuous changes in the Constitution, making it unstable. Thus, this Article VIII attempts to preserve the fundamental character of the Constitution, while giving room for the necessity to adapt this basic document of the European Federation to changing developments and insights.

In essence, the American founding fathers have once again built in a system of checks and balances by steering the decision making relating to changing the Constitution by weighing federal insights on the one side and stately insights on the other. We even go one step further by giving the first decision to the Citizens. This stems from the Swiss Constitution. Should the Citizens not reach the three quarters majority required to ratify the proposed amendment, the legislative branches of the States and the Houses of the Congress will not have a task in this. Next to this addition to the American Constitution we have simplified this Article compared to the respective Article V of the American Constitution.

Article IX – Federal Loyalty

1. *This Constitution and the laws of the European Federation, which will be made in connection with the Constitution, and all treaties, made or to be made under the authority of the European Federation, are the supreme law of the Federation. The judges in every State will be bound hereby, notwithstanding any other regulation in the Constitution or the laws of any State.*
2. *The members of the European Congress, the members of the legislative branches of the States and all executive and judicial officers, both of the European Federation and of the States, will be bound by an oath or affirmation to support this Constitution. But no religious test shall ever be required as a qualification for any office or public trust under the European Federation.*

Explanation of Article IX

The first Clause of this Article makes it clear that the Constitution, together with federal laws and treaties, are the fundamental judicial order within the Federation. Everybody has to abide by these laws. Even the judges of the States. Laws from States – whether in a State Constitution, or in laws and by-laws of States – may not clash with the federal Constitution. To try to nullify a federal law through a State law (a matter that the Parliament of Oklahoma attempted in February 2013 regarding Obamacare) is nonsense. Outside the federal laws the States are free to make the laws they deem appropriate. To be sure that respect for the Constitution will be enforced Clause 2 regulates that the responsible authorities perform an oath or affirmation, in which no inquiry will be made regarding their religious beliefs.

Article X – Transitional Measures and Ratification of the Constitution

1. *All debts entered and engagements contracted by States before the ratification of this Constitution will remain valid within the European Federation.*
2. *The ratification by a simple majority of the Citizens of nine States of the Eurozone will be sufficient for this Constitution of the European Federation to come into force.*

Explanation of Article X

Article V of the American Constitution offers States wishing to join the federal Constitution the opportunity to start their membership in the knowledge that they would get support from the Federation to fulfill their financial and other commitments, contracted or entered into prior to ratifying the Constitution. We adopt this regulation in the first Clause of our Article X. Debts and commitments of those States – contracted or entered into before ratification – are also valid within the European Federation. The Federation thus supports them in fulfilling their financial and other obligations, as is already the case in the Eurozone to keep the less financially strong EU-States on their feet. The Eurozone realizes, finally, that a common single currency should have common economic support; this should be no different in a European Federation and is an inherent part of this Constitution.

After the Constitution has come into force, States that turn out to be unable to solve their financial problems can no longer count on the amalgamation of their debts by the federal authorities. In order to safeguard the operation of the Federation, States joining the Federation after the Constitution has come into force, will not profit from this federal support. We have already regulated this matter in Article VII, Section 2, Clause 4. Thus, those States will have to have their 'financial act together' before being allowed to join the Federation.

As has been stated several times, the founding fathers of the American Constitution were sensible enough not to demand – as prescribed in the 'Articles of Confederation' – the unanimity of all States, but to regulate that the Constitution would come into force upon ratification by the Citizens of nine of the thirteen States. It has to be said that they did not aim specifically at the figure 'nine', but rather at the fact that nine is a two-thirds majority of thirteen. For us a two-thirds majority is not that relevant because the Treaty of Lisbon presents in Article 20 the basis for a strengthened cooperation by nine EU-Member States. That is sufficient for us to work with.

So, this is our draft Constitution for the European Federation. Short and sweet – which brings to mind the statement made by Napoleon Bonaparte in 1804: *"The best Constitution is the concise and pithy one."* Miles apart from the legal monster known as the Treaty of Lisbon with its hundreds of complicated articles along with the many exceptions to these articles. We leave this Treaty as it is for now to die alongside the ailing intergovernmental governing system. We appeal for the establishment of a European Federation, as the most suitable vehicle for taking Europe into the future. This is the institutional jump that now – while the European Union is falling apart – is needed; maybe the former President of the European Commission Romano Prodi referred to such a drastic change by stating in 2000 *"Great reforms will make a great Europe."*

Let us recall once again that the American founding fathers fulfilled, as early as 1787, Prodi's statement avant la lettre by three times committing an act of great disobedience. First, by disregarding the assignment to strengthen, in the Convention of Philadelphia, the Confederal Treaty. Instead they turned away from that treaty and designed a federal Constitution. Second, by not presenting the draft Constitution to the thirteen Confederal States, but rather to the Citizens of the States. Third, they ignored the requirement of unanimous voting as prescribed by the Confederal Treaty; in case the Citizens of nine States were to ratify, the Constitution would come into force. Three times a step out of the box, a paradigm shift of the purest kind.

Do not say that this draft, analogous to the American Constitution, is alien to the European culture and philosophy, and therefore should be rejected. Those who would make such a claim are ignorant of Europe's history. What the Americans designed at the end of the 18th century stems straight from the constitutional and institutional reflections of European philosophers of that time, including Montesquieu and Locke. Together with Burgess we recall that stately dealing with pluralism and the diversity of society on the European continent is three centuries older than on the British and Irish islands. Thus, a federal Constitution for Europe, after the American model – a system that cannot be opposed by any European Citizen nor State – is nothing else than homecoming, finally. What the Americans already accomplished after eleven years – finding one all-encompassing authority as a remedy against degen-

erative splintering, from which Europe is now suffering more than ever – is taking Europe over two hundred years after the French Revolution to realize. We may be surprised by this, or annoyed. Better to enjoy the fact that it finally seems to happen.

An additional advantage of this type of a Constitution is the high degree of difficulty to adapt it. The conditions to adapt it are a great guarantee against influences by national or even nationalistic tendencies of Member States. Even though, without lapsing into the sheer endless revision procedures and the unattainable unanimity in the European Council or the unlikely consent of all national Parliaments, as required by the Treaty of Lisbon. No European State can reasonably contest the correctness of this compact Constitution: it does not threaten any existing right or interest of whatever State; instead, it is putting the responsibility on the higher, European level, where it should lie in order to engage in the global challenges. Precisely the phenomenon within the intergovernmental system, namely that each State wants to have its own interests processed in a treaty that semi-connects them, breaks down the commonality. A compact Constitution such as the one presented by us does not leave any doubt regarding the room for commonality and does not allow any room for particularism by Member States. The fundamental strength of this Constitution is the division of the horizontal power spread between the trias politica and the vertical division of sovereign powers of both the federal authority and the States. Without political hierarchy between both levels of governance.

We are aware of the fact that choosing to approach the American Constitution as closely as possible may not cover European reality in all its aspects. Possibly, we took some subjects too literally, or we did not process amendments totally correct in this draft. We also refrain from making any claims regarding the practical operation of this system. As has been the case in the USA – a continuous evolution, for instance with respect to shifting more power to the federal authorities, also to the President – the operations of a federal Parliament, Government and Judicial system have to find their own course in Europe.

Finally, the ratification of this European Constitution is a task and matter for the Citizens of at least nine Member States of the Eurozone. Not for the present European Parliament, nor for the European Council, nor for the European Commission, nor for the national Parliaments or their Governments. But for the Citizens. Who doubts if there will be enough support for such an approach may be convinced by the following quote from the Berlin Europe Lecture by Bundespräsident Joachim Gauck on February 22nd, 2013 (thanking dr. Jens Baganz, chairman of the German movement We-are-Europe, who sent us this quote):

"Ohne die Zustimmung der Bürger könnte keine europäische Nation, kann kein europäischer Staat wachsen. Takt und Tiefe der europäischen Integration werden letztlich von den Europäischen Bürgerinnen und Bürgern bestimmt. … Europa braucht jetzt nicht Bedenkenträger, son-

dern Bannerträger, nicht Zauderer, sondern Zupacker. … Mehr Europa heißt für mich: mehr Europäische Bürgergesellschaft.“

In English:

“No European nation, no European state, can grow without the consent of its citizens. The pace and depth of European integration will ultimately be determined by them … What Europe needs now are not doubters, but standard-bearers, not ditherers but people who have a hands-on approach. … For me, more Europe means more European civil society.”

Here a European federalist of the highest level is speaking. On this fundament we present our draft for a European Constitution to the Citizens of Europe. They will decide what will happen with this.

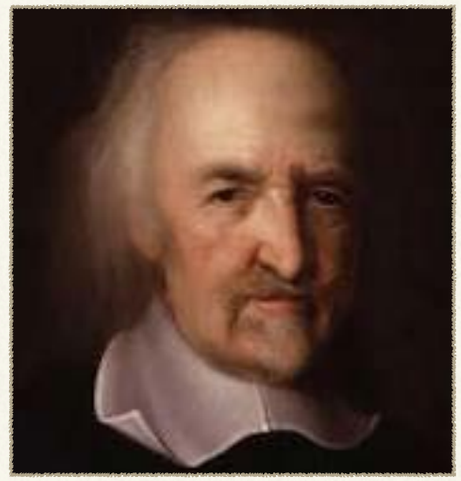


Klinkers & Tombeur, May 2013

PAPER 25

Papers no. 1-20 explain a) why the intergovernmental EU-system is undermining the goal of cooperation in the interests of Europe; b) why it is preferable to have a federal Europe and that Europe should thus federalize; c) that any attempts at federalization through a change of the existing EU-treaties have always failed and why they will continue to fail; d) that European Citizens thus have to design a federal Constitution themselves, as they did at the end of the 18th century in America; and e) what constitutional and institutional conditions need to be met in order to ensure that the federal system flourishes.

Papers no. 21-24 contain a draft federal Constitution for Europe, based on the American Constitution, strengthened with elements from the Swiss Constitution and adapted to present-day Europe. In this Paper the most important characteristics of federalism and the proposed European Federation will be discussed: what a Federation is, what it is not, why it is still not here and why it should be urgently adopted. Furthermore, we present the necessity for all federalists joining together for a Citizens Convention on European Constitution before the elections for the European Parliament in May 2014.



Thomas Hobbes

FAQ 30: Thus, you have put in aspects of direct democracy?
Yes. Mid-19th century the Swiss designed their own federal Constitution, based on the American Constitution. In that document they incorporated elements of a direct democracy. We have added the best aspects of these to our Constitution.
See Papers no. 23 and 24.

FAQ 31: What do member states of a Federation have to adjust in their own country?
Nothing. They remain how they are and they keep what they have: their own parliament, government, judicial system etc. The only thing they do is transfer some well-defined matters that they can no longer efficiently take care of themselves – due to globalization – to another body, so that they do not have to concern themselves with these matters anymore.



JÜRGEN HABERMAS

"These are fateful times. (…) Our lame political elites, who prefer to read the tabloid headlines, must not use as an excuse that their populations are the obstacle to a deeper European unification. With a little political backbone, the crisis of the single currency can bring about (…) a cross border awareness of a shared destiny."

PAPER 25

In the year 1748 Montesquieu stated in his 'L'esprit des lois' that a Federation has an added value compared to nation states: it combines the advantages of both smaller states that are socially stable (they can hardly disintegrate), and of larger States, which have better economies of scale, plus the power to defend themselves against external threats. The system is founded on the inalienable sovereignty of the Citizens who cede powers to the Governments of the Member States and to a federal body; powers that have to be applied to take care of the interests that the Citizens themselves cannot take care of (any longer) themselves. Furthermore, the system is founded on mutual solidarity. In this sense Montesquieu elaborated on the political philosophy of Althusius, the founding father of European federal thinking: the State starts with the Citizen, both individually and in a collective context.

In the first series of Papers we have explained what a federal system entails: a vertical division of powers, without a hierarchy: a limitative number of sovereign powers have been vested in a federal body, while all other powers remain with the Citizens and the Member

States. Thus, in a real Federation there are always several centers of power – a Federation can never be a dictatorship. What is more, the several centers of power mutually guarantee each other's continued existence. No center can be annulled by another center, unless through the agreement of all centers in the Federation, including the center that is to be annulled. This is federalism's democratic added value: the extra dimension of a federal system through the (extremely important) vertical division of powers, besides the horizontal division, the trias politica.

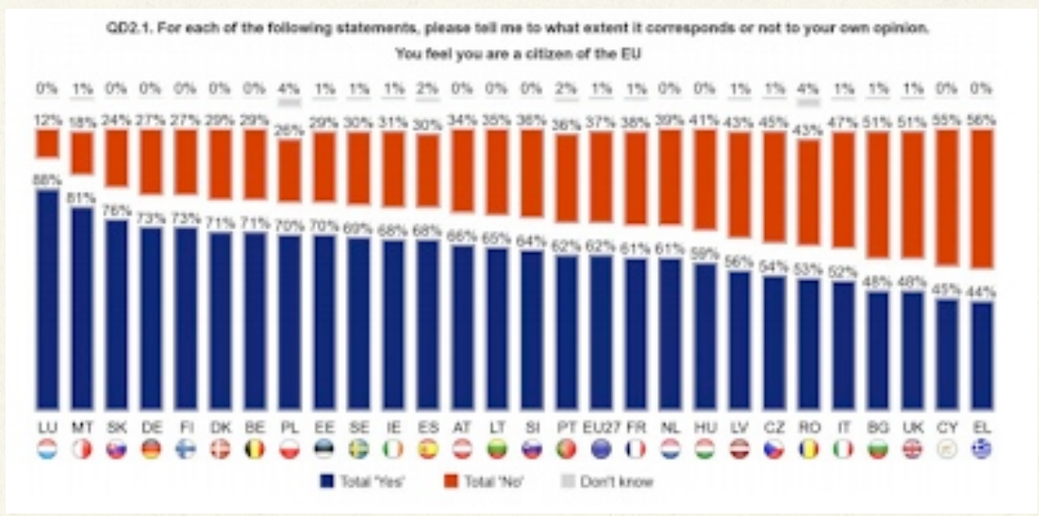
Thus, this is completely different from a Confederation or a type of decentralization where the center of power always cedes power and responsibility, through a treaty, law or decision. Such power centers can always – unilaterally – take back the power once ceded. Within these two systems sovereignty is not shared, contrary to the federal system. The core, the essence of federalism, is the sharing of sovereignty, which is completely mutually guaranteed and applicable in both private and public organizations. No more, no less. That is why it is fundamentally incorrect to claim that the European Federation will be a Super State or an Empire. Such claims are based on a lack of constitutional knowledge, a serious shortcoming that has been revealed in the previous decades in Europe's political world, a shortcoming that up until now has been insufficiently exposed by scientists and the media.

We are of the opinion that there are ample compelling reasons to make the paradigm shift. Europe should gather its scarce means – for lack of its own raw materials – to sustain all our communal European interests. Interests such as security, health and work. Within the present accelerating process of globalization Europe does not have friends, only some allies, but it does have many competitors and even enemies, especially in the field of economy. Nobody but the Europeans themselves can make the turn – no Americans, no Russians or Chinese. It is Europe's turn to claim self-determination for the sake of jointly taking care of common values and interests. Thus, together they can maintain their freedom, security, economy and welfare. The paradigm shift has to be set in motion, now, in 2013 – the year of the European Citizen. For those who are still in doubt, we have presented in some Papers examples of Federations, established by independent states in order to improve their mutual functioning and to strengthen their position towards third States, for instance the United States of America and Switzerland. We have also presented examples of Federations which were established incorrectly, and thus went down.

If one assesses that the world's most successful countries are Federations – Australia, Brazil, Canada, Germany, India, Austria, the USA and Switzerland – then it should be clear that being a Federation has more advantages than disadvantages. Compare the strength of these States with the European Union, which is falling apart under the pressure of national agendas, with political fault lines between the Eurozone and the rest of the EU, as well as fault lines between EU-member states.

Why then not jump off the abyss-headed intergovernmental train to a federal one? In an orderly manner: no revolution, no chaos. After sixty years of wandering around in the EU, to now arrive at the point where the whole EU is in danger. What is withholding politicians of continental Europe? Their lack of knowledge of the added value of a federal system? Their mistrust of one another? Their lack of courage towards the Citizens? We do not call upon the European politicians to integrate but to federalize, with the words by Jürgen Habermas in his book 'The Crisis of the EU – a Response': *"These are fateful times. (…) Our lame political elites, who prefer to read the tabloid headlines, must not use as an excuse that their populations are the obstacle to a deeper European unification. With a little political backbone, the crisis of the single currency can bring about (…) a cross border awareness of a shared destiny."*

European Citizens have told decision-makers – year after year – that this intergovernmental Europe stinks. The result of polls carried out by the European Commission, the Eurobarometers, clearly indicate that public opinion is prepared to accept European governance, although from a different kind than the present EU. This is shown by an ample majority of voters who are continuously positive about a common European foreign and defense policy; circa 66% in favor of a foreign policy and even 75% in favor of a security and defense policy – in the period 2001-2008, thus before the financial-economic crisis. After 2008 the EU did not poll this opinion, at least not through the Eurobarometers. But also the two third majority (66%) of EU-citizens declaring, in May 2007, to be in favor of a European Constitution demonstrates this democratic support. Only five member states (Denmark, Finland, Austria, the United Kingdom and Sweden) 43-49% were against it. Notwithstanding a majority-support in favor of a Constitution, in June 2007 the European Council decided to establish a 'simplified treaty' … However, that Treaty of Lisbon is the worst legal document ever written in the history of Europe.



Eurobarometer, July 2013. On the question "Do you feel a citizen of the EU?", a majority (62%) of respondents agree, although in three countries more people disagreed than agreed with this statement. That this includes the UK may not be a big surprise, but that Greece and Cyprus are on there as well shows how badly the crisis management has tarnished the EU's reputation.

For many years EU-public opinion has proven that a sense of European citizenship transcends nationality; even within the present

economic crisis. In 2011 and 2012 62% reacted positively to the question as to whether they considered themselves a European Citizen. Nevertheless the member states' political elites keep neglecting these opinions and continue to run in the labyrinth that has become of the EU – resulting in citizens turning away from them and from the EU. You will find on our website www.europeanfederalistpapers.eu, under the menu item 'Information-News', a brief description by Aisling Twomey of the result of the Eurobarometer held in November 2012: it reveals the European Citizens' severe distrust of the democratic quality of the EU and of their national parliaments.

Since the occurrence of the systemic error in the Schuman Plan (1950) – aiming to establish European togetherness through a Treaty by Nation States rather than a Constitution by Citizens (see Papers no. 11 and 12) – Europe has been wandering around from one wrong exit to the next. Only to arrive at the dead-end street of the Treaty of Lisbon, desperately searching for the correct course: the course to a federal Europe – a course that in 1950 was strived for indeed, but never found. In 1950 a navigation tool was lacking in the form of the European version of the American Federalist Papers. Once again the facts: after eleven years of confederal muddling through, in 1787 55 people gathered in Philadelphia to decide in – only – ten days that their Treaty of the 'Articles of Confederation' could no longer be the all-binding document; that on the contrary, a federal Constitution – to be ratified by the Citizens of only nine of the thirteen confederal States – could guarantee freedom, stability and economic prosperity. By taking this decision the 55 delegates deviated from their assignment to change the confederal treaty. They based their decision on their knowledge of Greek, Roman and – mind you – the European political philosophical writings of their time. They knew their classics. They did.

The Hertenstein Programme, 22 September 1946

1. A European Community on federal lines is a necessary and essential contribution to any world union.

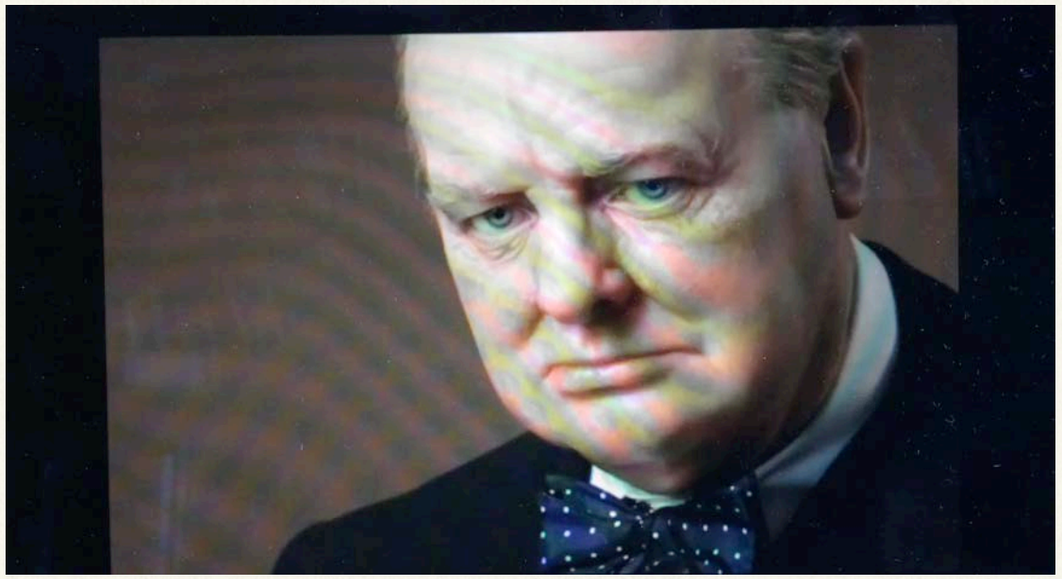
2. In accordance with federalist principles which call for a democratic structure beginning at the base, the community of European peoples must itself settle any differences that may arise among its members.

3. The European Union is to fit into the framework of the UN Organisation as a regional union under Article 52 of the Charter.

4. The members of the European Union shall transfer part of their sovereign rights - economic, political and military - to the Federation which they constitute.

One of the important post-war trials to create a basis for a federal Europe.

We Europeans did not. After the Ventotene Manifest by Altiero Spinelli and Ernesto Rossi in 1941 – a passionate call for federalization in order to stop Europe's never-ending wars – this passion was kept alive for a while with the publication, on September 19th 1946, in Luzern (Switzerland) of the so-called Hertenstein Program: twelve basic principles for a European Community along federal lines, formulated by a group of federalists in Hertenstein. It was published at the same moment when Winston Churchill in Zürich called for the establishment of 'a kind of United States of Europe'. However, without the United Kingdom (this aloofness can be seen even then), but only intended to put a permanent end to the infinite array of wars on the European continent. Thereafter the thinking process about European unity developed along two different lines. One tendency was to hold the opinion that unity should be realized through agreements between States: confederal intergovernmentalism. A second tendency aimed at federalization as the instrument for creating European unity; this one gained strength during the 1947 Europe Congress in Montreux, also the birth certificate of the Union of European Federalists. However, after a Congress in 1948 in the Hague the first tendency, the confederal intergovernmentalism, won. This was demonstrated in the Schuman Plan, written by Jean Monnet (1950). This Plan indicated twice – indeed – the necessity of a federal Europe (see Paper no. 12), but the instrument to be applied for this – a Treaty by Nation States – was the choice for intergovernmentalism: all powers in the hands of Government leaders, at the most in the hands of national Parliaments. History has taught where this has taken us: an increasingly dissolving Europe, dictated by nationalistic agendas.



Prime Minister Winston Churchill, September 1946 at the university of Zurich, speaking about the need to establish the United States of Europe.

What should Monnet and Schuman have done in 1950? They should have written the European version of the American Federalist Papers, plus a federal Constitution. If they would have done so, they would have taken – like the founding fathers in America did – the wisdoms of European philosophers as the navigation tool to find the correct course of federal thinking. Instead they gave ample room – probably led by the necessity to rebuild Europe after the devastations of World War II – to a confederal operation, by putting European decision making in the hands of government leaders, who from that moment on have never allowed that power to slip out of their hands. They began to apply their national agendas as the instru-

ment for creating a kind of European commonality. It has to be admitted that this has been a functional approach for some years. It has sowed the seed of connectedness. But too late they realized that this tool, as of the 1990s, turned against its goal and began to destroy the weak plants of togetherness. This process of destruction was so powerful that the attempt to halt it by organizing a Convention, under the leadership of former French President Valéry Giscard d'Estaing, aimed at creating a European Constitution, failed. As of that moment the European Council produces more destruction than added value.



Giscard d-Estaing, chairing the convention to create a European Constitution.

Let us illuminate some aspects of the approach and results of Valéry Giscard d'Estaing. During the European Council in Laken (Belgium) on December 14 and 15th 2001, European Government leaders evaluated the functioning of European cooperation. They came to the conclusion that the legal basis of that cooperation should be renewed. To that end, Giscard d'Estaing was entrusted with leading a European Convention, a debate between 217 representatives from all EU-states, from all Parliaments (both one- and two-Chamber Parliaments), from the European Commission and from the European Parliament. Besides them there were observers from thirteen candidate EU-members, from European institutions such as the Ombudsman, the European social partners, the Economic and Social Committee and the Committee of the Regions. Thus, the assembly was inspired nationally and institutionally. Wrong. Later on, participants in the Convention declared that there had been intense consultations with the national home fronts, which became visible in the achievements of the Convention… Twice wrong.

The Convention convened from February 2002 until July 2003 and produced – by consensus – a European Constitution. The German proposal to introduce a Kompetenz Katalog with a limitative list of EU-powers – the absolute essence of a federal system – was rejected. Instead, three kinds of powers were created for the EU; a complicated system that became even more complicated due to the old dogmas of subsidiarity and goal orientation (as an excuse for executing hierarchical decision-making), both the seed of a continuous tugging and pulling between the Member States and the EU with respect to making rules and policies. After half a century of wrong repairing of the EU and a decade of great changes in Eastern Europe this was all the Convention could achieve, apparently. Then this draft Constitution was ripped to pieces by national-driven negotiations between Government leaders during an 'Inter-

governmental Conference' from October 2003 until June 2004. Thereafter, elements of the Constitution of Giscard's Convention which had survived the negotiations were glued together in the Treaty of Lisbon.

Well, see here how the system-theoretical principle of positive feedback works, as explained in Paper no. 11: once, due to a systemic error on a wrong course, the deviation of the intended course becomes larger and larger as soon as one tries to correct the deviation. Without arguing over their good intentions, those who designed the Treaty of Lisbon actually gave birth to a monster. And those who now propose to change the EU-treaties should be stopped, because they will reopen Pandora's Box and bring even more misery over the whole of Europe. We need to stop this monster before it is too late.

We can only find the correct course by returning to the Citizens of Europe. That is why we have intended to present, 63 years after the Schuman Plan, to the European Citizens our European Federalist Papers, including a federal Constitution: in our opinion the required navigation tool to coach the ship of Europe into a safe harbor. The Citizens of Europe are the constituents, not the States or other governmental institutes, because the Citizens are there not to serve Governments but Governments are there to serve the Citizens, as we have formulated in the Preamble of our draft Constitution.

When James Madison wrote in the draft of the First Amendment – the Bill of Rights – of the federal American Constitution in 1789 *"All power is originally vested in, and consequently derived from, the people... The people have an unalienable right to reform or change their government, whenever it be inadequate to the purposes of its institution"*, he was influenced by the French Revolution and earlier on by the social-political philosophers of Europe. For instance Jean-Jacques Rousseau (1712-1778) with his 'Du contrat social (ou principes de droit politique)' (1762), in the footsteps of John Locke (1632-1704) with his 'Two Treatises of Government' and 'Epistulae de tolerantia'. They claimed that the Citizens are the source of sover-



Rousseau: "As soon as any man says of the affairs of the State 'What does it matter to me?' the State may be given up for lost."

eignty – the sovereignty of the people – that every human being should enjoy freedom and that the State should be organized as a constitutional and representative democracy. Such an organization legitimizes the designing of a Constitution. This is a contract between Citizens, only to be changed by themselves. Apparently, European policy makers have been alienated from their own political-philosophical history. That is why we, the European Citizens, must act upon the urgent necessity for a Citizens Convention on European Constitution.

Contrary to some federalists in European Parliament and elsewhere, we hold the opinion that it is strategically wrong to postpone the intended federal European Convention (similar to the one in Philadelphia) until 2015, thus following the EP-elections to be held in May 2014. The paradigm shift towards a Federation has to be supported by a majority of the Citizens – the voters who are not customers but owners – and not by Members of Parliament, elected in national constituencies. Such a support should be visible through the election campaigns and results in 2014. We do not understand what motive is underlying this postponement, the more not since the fault lines in the EU are growing larger and larger. On the one hand these European federalists advocate, with well-formulated arguments, that a federal Convention should be instrumental in transforming the intergovernmental system as soon as possible into a federal Europe. On the other hand they prefer to delay this precious moment until 2015.

We, the European Citizens, should therefore support an initiative for a federal Citizens Convention to decide upon a federal European Constitution before May 2014. And what could be a better opportunity then coming together in a Citizens Convention on a European Constitution, like the Convention of Philadelphia in 1787? Such a Convention could deliver in 2013 the draft of a federal Constitution, to be presented to the Citizens of Europe – or at least to the Citizens of the Eurozone. The result of such a process might determine the election battle in May 2014. Despite the fact that even true federalists hold different opinions about the best way to create a European Federation it is necessary that we federalists come together and close the ranks. Apparently it is up to us Citizens to do what our leading politicians omit to do – initiating a brave, honest and democratic process that brings together federalists and pro-Europeans.

This is the more enigmatic since even members of the European Commission, including President Barroso, have for the last year been subscribing to the importance of creating a Federation. Even though they use, in our opinion, the wrong words – the repeatedly advocated 'Federation of Nations' by Barroso is nothing other than the wrongly formulated and therefore failed Federation as foreseen in the Schuman Plan of 1950. Striving for a Federation of Nations is repeating the wrong steps, especially because Barroso and so many others calling themselves federalists, want to federalize through changing the Treaty of Lisbon. In doing so the federal idea would sink even further into the intergovernmental black hole.

Positive signals that the F-word is no longer taboo make us believe that we are on the right track and that we should continue on that track. We cannot agree more with Victor Hugo when he says *"On résiste à l'invasion des armées; on ne résiste pas à l'invasion des idées"* (*One should oppose to invading armies; one should not oppose to invading ideas.*)

To our pleasure the European Federalist Papers are read and esteemed by an increasing number of Citizens, even outside of Europe. This has led to spontaneous initiatives to further the dissemination and deepening of the Papers and our draft federal Constitution. At present, May 2013, writers in some other countries have begun translating the European Federalist Papers into their native languages. These will be published on the website upon completion.

Our striving for a federal Europe may be an in-between step in the context of a larger development towards a world consisting of a group of Federations, an ideal of the umbrella-organization World Federalist Movement, including the Democratic World Federalists. Also for other federalists the goal is already clear, laid down in 1991 in the 'Constitution for the Federation of Earth', designed by the World Constitution and Parliament Association (WCPA). However, we have not yet arrived there. Let us first finalize what was intended by the Schuman Plan in 1950 but not yet accomplished: a European Federation.

Then we can truly say:

"Annuntiamus cum magno gaudio: habemus foederationem Europae"

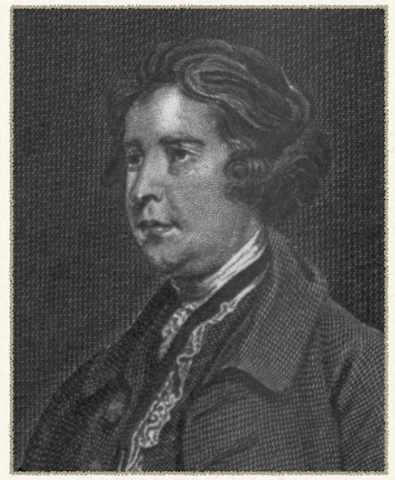


With respect to our plea in Paper no. 25, dated May 2013, we have to add at this moment (April 2014) that it has been picked up by Alexandru Diaconu, President of the Jean Monnet Association in Romania, also responsible for the design of the picture of Lady Europe. Together with Mr. Diaconu we developed a Citizens Convention on a Federal Europe in November 2013, in Bucharest, aiming at discussing and accepting our draft federal Constitution, whether or not amended by the Convention's Delegates. Due to lack of funds, to gather at a too short notice, we did not manage to get this Citizens Convention organized, yet. Our intention is still alive. We hope to succeed in 2014 or 2015. See above the proposed Convention venue: the House of the Romanian Parliament.

Klinker & Tombeur, May 2013

DRAFT CONSTITUTION

This chapter contains the draft Constitution for a European Federation, composed of the articles that have been explained in the Papers no. 21 - 24.



Edmund Burke

FAQ 32: Why do you intend to organize a federal Convention in 2013, such as the Convention of Philadelphia in 1787?
We will have elections for the European Parliament at the end of May 2014. In the last year many EU-politicians – including the President of the European Commission – have come forward with the statement that there should be a federal Europe. Apparently, EU-politicians have begun uttering these words due to the series of crises in Europe. Well, the time is right to have a Convention by Citizens, to design a draft federal Constitution and to present it to all European Citizens in the context of a referendum.



LADY EUROPE

PREAMBLE

We, the Citizens of Austria, Belgium, Cyprus, Germany, Estonia, Finland, France, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Slovakia and Spain establish this Constitution for all countries in the Eurozone, and furthermore for each country entering the Eurozone, with the goal of forming a Federation that guarantees freedom, order, safety, happiness, justice, defense of the Federation against enemies, sustainability of the environment as well as acceptance and tolerance of the diversity of cultures, convictions, ways of life and languages of all who live and will live in the territory that belongs to the jurisdiction of the Federation.

Article I – The Federation and the Bill of Rights

1. The European Federation is formed by the Citizens and the States, participating in the Federation.
2. The powers not delegated to the European Federation by the Constitution, nor prohibited to the States by this Constitution, are reserved to the Citizens or to the respective States.
3. The European Federation endorses the rights, freedoms and principles as written in the Charter of the Fundamental Rights of the European Union, excluding the principle of subsidiarity, as mentioned in the Preamble of this Charter. The European Federation accedes to the European Convention on Human Rights and Fundamental Freedoms.

Article II – Organization of the Legislature

Section 1- Setting the European Congress

1. The legislature of the European Federation rests with the European Congress. It consists of two Houses: the House of the Citizens and the House of the States, under the name Senate.
2. The European Congress and its two separate Houses have their residence in Brussels.

Section 2 – The House of the Citizens

1. The House of the Citizens is composed of the representatives of the Citizens of the European Federation. Each member of the House has one vote. The members of this House are elected for a term of six years by the Citizens of the Federation qualified to vote, united in one constituency. The election of the members of the House of the Citizens takes place each time in the month May, and for the first time in the year 20XX. They enter office at the latest on June 1st of the election year. The members resign on the third day of the month May in the final year of their term. They can be re-elected twice in succession.
2. Eligible are those who have reached the age of thirty years and are registered as Citizen of a State of the Federation during at least seven years.
3. The members of the House of the Citizens have an individual mandate. They carry out this mandate without instructions, in the general interest of the Federation. This mandate is incompatible with any other public function.
4. The right to vote in elections for the House of the Citizens belongs to anybody who has reached the age of eighteen years and is registered as Citizen in one of the States of the Federation, regardless of the number of years of that registration.
5. The House of the Citizens choose their Chairperson, with the right to vote, and appoint their own personnel.

Section 3 – The House of the States, or the Senate

1. The Senate is composed of eight representatives per State. Each Senator has one vote. The Senators are appointed for a term of six years by and from the legislature of the States, provided that after three years half the number of Senators resign. The first ap-

pointing of the full Senate takes place within the first five months of the year 20XX. The three-yearly appointments to replace half of the Senators takes place in the first five months of that year. The Senators enter their office at the latest on June 1st of the year of their appointment. They resign on the afternoon of the third day of the month May in the final year of their term. The Senators who resign are immediately re-appointable for a further term of three years. Each Senator has one vote. The Rules of Proceedings of the Senate regulate the way of resigning of one half of the Senate.

2. Eligible as Senator are those who have reached the age of thirty years and who have been registered for a period of at least seven years as Citizen of a State of the European Federation.
3. The Senators have an individual mandate. They carry out this mandate without instructions, in the general interest of the Federation. This mandate is incompatible with any other public function.
4. The Vice-president of the European Federation chairs the Senate. He has no right to vote unless the votes are equally divided.
5. The Senate elects a Chairperson pro tempore who in the absence of the Vice-president, or when he is acting President, leads the meetings of the Senate. The Senate appoints its own personnel.
6. The Senate holds the exclusive power to preside over impeachments. In case the President, the Vice-president or a member of Congress is impeached the Senate will be chaired by the Chief Justice of the Court of Justice. In case a member of that Court is impeached the President will chair the Senate. No one shall be convicted without a two third majority vote of the members present.
7. Conviction in cases of impeachment shall not extend further than the removal from office and disqualification from holding any office of honor, trust or salaried office within the European Federation. The convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.

Section 4 – The European Congress

1. The time, place and manner of electing the members of the House of the Citizens and of appointing the members of the Senate are determined by the European Congress.
2. The European Congress convenes at least once per year. This meeting will begin on the third day of January, unless Congress determines a different day by law.
3. The European Congress settles Rules of Proceedings for its manner of operating.

Section 5 – Rules of Proceedings of both Houses

1. Each House settles Rules of Proceedings. They regulate what subjects require a quorum, how the presence of members can be enforced, what sanctions can be imposed in case of structural absence, what powers the Chairperson has to restore order and how the proceedings of meetings and votings are recorded.

2. The Rules of Proceedings regulate punishment of members of the House in the case of disorderly behavior, including the power of the House to expel the member permanently by a two third majority.
3. During meetings of the European Congress no House may adjourn for more than three days without the consent of the other House, nor may it move its seat outside of Brussels.

Section 6 – Compensation and immunity of members of Congress

1. The members of both Houses receive a salary for their work, determined by law, to be paid monthly by the Treasury of the European Federation. Next to that they receive a compensation for travel and accommodation expenses in accordance with the real expenses made, and confined to the travels and activities justified by their work.
2. The members of both Houses are in all cases, except treason, felony and disturbance of the public order, exempted from arrest during their attendance at sessions of their respective House and in going to and returning from that House. For any speech or debate in either House they are not to be questioned in any other location.

Article III – Powers of the Legislative Branch

Section 1 - Way of proceeding to make laws

1. The House of the Citizens has the power to initiate tax laws for the European Federation. The Senate has the power – as is the case with other law initiatives by the House of the Citizens – to propose amendments in order to adjust federal tax laws.
2. Both Houses have the power to initiate laws. Each draft law of a House will be presented to the President of the European Federation. If he/she approves the draft he/she will sign it and forward it to the other House. If the President does not approve the draft he/she will return it, with his/her objections, to the House initiating the draft. That House records the presidential objections and proceeds to reconsider the draft. If, following such reconsideration, two thirds of that House agree to pass the bill it will be sent, together with the presidential objections, to the other House. If that House approves the bill with a two third majority it becomes law. If a bill is not returned by the President within ten working days after having been presented to him/her, it will become law as if he/she had signed it, unless Congress by adjournment of its activities prevents its return within ten days. In that case it will not become a law.
3. Any order, resolution or vote, other than a draft law, requiring the consent of both Houses – except for decisions with respect to adjournment – are presented to the President and need his/her approval before they will gain legal effect. If the President disapproves, this matter will nevertheless have legal effect if two thirds of both Houses approve.

Section 2 – Substantive powers of the Houses of the European Congress

The European Congress has the power:

a. to impose and collect taxes, imposts and excises to pay the debts of the European Federation and to provide in the expenses needed to fulfill the guarantee as described in the Preamble, whereby all taxes, imposts and excises are uniform throughout the entire European Federation;

b. to borrow money on the credit of the European Federation;

c. to regulate commerce among the States of the European Federation and with foreign nations;

d. to regulate throughout the European Federation uniform migration and integration rules, what rules will be co-maintained by the States;

e. to regulate uniform rules on bankruptcy throughout the European Federation;

f. to coin the federal currency, regulate its value, and fix the standard of weights and measures; to provide in the punishment of counterfeiting the securities and the currency of the European Federation;

g. to regulate and enforce the rules to further and protect the climate and the quality of the water, soil and air;

h. to regulate the production and distribution of energy;

i. to make rules for the prevention, furthering and protection of public health, including professional illnesses and labor accidents;

j. to regulate any mode of traffic and transportation between the States of the Federation, including the transnational infrastructure, postal facilities, telecommunications as well as electronic traffic between public administrations and between public administrations and Citizens, including all necessary rules to fight fraud, forgery, theft, damage and destruction of postal and electronic information and their information carriers;

k. to further progress of scientific findings, economic innovations, arts and sports by safeguarding for authors, inventors and designers the exclusive rights of their creations;

l. to establish federal courts, subordinated to the Supreme Court;

m. to fight and punish piracy, crimes against international law and human rights;

n. to declare war and make rules concerning captures on land, water or air; to raise and support a European defense (army, navy, air force); to provide for a militia to execute the laws of the Federation, to suppress insurrections and to repel invaders;

o. to make all laws necessary and proper for carrying out the execution of the foregoing powers and of all other powers vested by this Constitution in the Government of the European Federation or in any Ministry or Public Officer thereof.

Section 3 –Guaranteed rights of individuals

1. The immigration of people, by States considered to be permissible, is not prohibited by the European Congress before the year 20XX.

2. The right of habeas corpus is not suspended unless deemed necessary for public safety in cases of revolt or an invasion.
3. The European Congress is not allowed to pass a retroactive law nor a law on civil death. Nor pass a law impairing contractual obligations or judicial verdicts of whatever court.

Section 4 – Constraints for the European Federation and its States

1. No taxes, imposts or excises will be levied on transnational services and goods between the States of the European Federation.
2. No preference will be given through any regulation to commerce or to tax in the sea ports and air ports of the States of the European Federation; nor will vessels or aircrafts bound to, or from one State, be obliged to enter, clear or pay duties in another State.
3. No State is allowed to pass a retroactive law nor a law on civil death. Nor pass a law impairing contractual obligations or judicial verdicts of whatever court.
4. No State will emit its own currency.
5. No State will, without the consent of the European Congress, impose any tax, impost or excise on the import or export of services and goods, except for what may be necessary for executing inspections of import and export. The net yield of all taxes, imposts or excises, imposed by any State on import and export, will be for the use of the Treasury of the European Federation; all related regulations will be subject to the revision and control by the European Congress.
6. No State will, without the consent of the European Congress, have an army, navy or air force, enter into any agreement or covenant with another State of the Federation or with a foreign State, or engage in a war, unless it is actually invaded or facing an imminent threat which precludes delay.

Section 5 – Constraints for the European Federation

1. No money shall be drawn from the Treasury but for the use as determined by federal law; a statement on the finances of the European Federation will be published yearly.
2. No title or nobility will be granted by the European Federation. No person who under the European Federation holds a public or a trust office accepts without the consent of the European Congress any present, emolument, office or title of any kind whatever, from any King, Prince or foreign State.

Article IV – Organization of the Executive Branch

Section 1- Establishing the offices of the President and the Vice President

1. The executive power is vested in the President of the European Federation. He/she is in office for a term of four years, together with the Vice President who shall also be in office for a term of four years. The President and the Vice President are elected as a duo by the Citizens of the European Federation, which has to that goal one constituency. They are re-electable – forthwith – for one term.

2. The election of the President and the Vice President of the European Federation will be held on the third Friday in the month of October; the first election in the year 2016. To bridge the period between ratification of the Constitution of the European Federation and the first election of its President and Vice President the European Congress appoints from its midst an acting President. This acting President is not electable as President, nor as Vice President, at the first Presidential election of the European Federation.
3. Electable for President or Vice President is any person who, at the moment of his candidacy, to be set by federal law, has reached the age of thirty five years, who has the nationality of one of the States of the European Federation and who has been registered as a Citizen of one of the States of the Federation for at least fifteen years.
4. The President receives a salary for this position, set by the European Congress. The salary shall not be increased nor decreased during the term of his/her presidency, and he/she does not receive any other compensation or in kind from the European Federation, nor from any individual State of the Federation, nor from any other public institution within or outside of the Federation, nor from a private institution or person.
5. Before the President enters the office he/she will pledge, in front of the Chief Justice of the Court of Justice, in the month of January in which his/her office begins, the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of the President of the European Federation and shall to the best of my ability preserve, protect and defend the Constitution of the European Federation.

Section 2 – Vacancy and end of the term of the President and the Vice President

1. The President and the Vice President will be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors. In case of removing the President from office, his/her death or his resignation, the Vice President will become President.
2. Whenever there is a vacancy in the office of the Vice President the President will nominate a Vice President who will take the office upon confirmation by a majority vote of both Houses of the European Congress.
3. Whenever the President transmits to the President pro tempore of the Senate and the Chairperson of the House of the Citizens his/her written declaration that he/she is unable to execute the powers and duties of the office, and until he/she transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.
4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Chairperson of the House of the Citizens their written declaration that the President is unable to

execute the powers and duties of the office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

5. Thereafter, when the President transmits to the President pro tempore of the Senate and the Chairperson of the House of the Citizens his/her written declaration that no inability exists, he/she shall resume the powers and duties of the office unless the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may provide by law, transmit within four days to the President pro tempore of the Senate and the Chairperson of the House of the Citizens a new written declaration that the President is unable to execute the powers and duties of the office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of the office, the Vice President shall continue to execute the same as Acting President; otherwise, the President shall resume the powers and duties of the office.
6. The terms of the President and the Vice President will end at noon on the 20th day of January in the final year of their term. The terms of their successors will then begin.
7. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President elect is unable to pledge the oath or affirmation for beginning his office, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Article V – Powers and tasks of the President

Section 1 –Presidential powers

1. The President is commander in chief of the armed forces, security agencies and militia of the European Federation.
2. He/she appoints Ministers, Ambassadors, other Envoys, Consuls and all public officials of the executive branch of the European Federation whose appointment is not regulated otherwise in this Constitution and whose offices are based on a law. He/she removes from office all public officials of the European Fed-

eration after their conviction of treason, bribery or other high crimes and misdemeanors.

3. He/she may seek the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices.
4. He/she has the power to grant amnesty and grace for offenses against the United States, except in cases of impeachment.
5. He/she has the power to make treaties, by and with the advice and consent of the Senate, provided two thirds of the Senators present concur.
6. He/she nominates and appoints judges of the Constitutional Court of Justice and of Federal Courts, by and with the advice and consent of the European Congress.
7. He/she organizes once per year a consultative referendum among all Citizens of the European Federation with the right to vote in order to obtain the opinion of the European people with respect to the execution of the federal policy domains. The referendum shall be executed under the umbrella of the European Digital Agenda.
8. He/she organizes a decisive referendum among all Citizens of the European Federation with the right to vote on the question of whether or not the European Federation should accede to, or should co-establish, an international organization with compulsory regulating power, after advice of the Senate about this acceding or co-establishing.
9. He/she may organize a referendum among all Citizens of the European Federation with the right to vote on a draft law that has met objections by the President according to Article III of this Constitution and about which the Houses of Congress after these presidential objections do not come to an agreement during two years. The term of two years begins as from the first plenary vote in the House that did not initiate the draft law.

Section 2 – Presidential tasks

1. The President gives the European Congress once per year information about the State of the Federation and recommends measures that he judges necessary.
2. The President may on extraordinary occasions convene both Houses of the European Congress or either of them, and in case of disagreement between them with respect to the time of adjournment he/she may adjourn them to such time as he/she thinks proper.
3. The President receives Ambassadors and other foreign Envoys.
4. The President takes care that the laws are faithfully executed.
5. The President commissions the tasks of all government officials of the European Federation.

Article VI – The Judicial Branch

Section 1 – Organization

The judicial power of the European Federation is vested in a Constitutional Court of Justice. European Congress may decide to install lower federal courts in States. The judges of the Constitutional Court of Justice as well as those of the lower federal courts hold their office as long as their conduct is good. For their services they receive a salary which during their office cannot be reduced.

Section 2 – Powers of Federal Courts

1. The federal judicial branch has the power to judge in all conflicts arising under this Constitution; with respect to all laws of the European Federation; to treaties made, or that shall be made under the authority of the European Federation; to all cases affecting Ambassadors, other Envoys and Consuls; to all cases of a maritime nature; to all cases in which the European Federation is a party; to controversies between two or more States, between a State and Citizens of another State, between Citizens of several States, between Citizens of the same State in matters of land in another State and between a State or Citizens of that State and foreign States of Citizens thereof.
2. The Constitutional Court of Justice has the exclusive power in all cases in which only States, Ministers, Ambassadors and Consuls are party. In all other cases, as mentioned in Clause 1, the Constitutional Court of Justice is the court of appeal, unless European Congress decides otherwise by law.
3. Except in cases of impeachment, the trial of crimes, as determined by law, will be by jury. These trials will be held in the State where the crime has been committed. If they have not been committed within any State the trial will be held at such place or places as decided by law by European Congress.

Section 3 – High treason

1. High treason against the European Federation shall only consist of levying war against the Federation, or of adhering to its enemies by giving them aid and comfort. No person shall be convicted of high treason without the testimony of at least two witnesses to the crime, or on confession in open court.
2. European Congress has the power to declare the punishment for high treason, but in no way a verdict of high treason shall lead to attainder or confiscation for the offspring of the convicted person.

Article VII – The Citizens, the States and the Federation

Section 1- The Citizens

1. The Citizens of each State of the European Federation possess also the Citizenship of the European Federation with all the associated political and other rights. The Citizens of a Member State are also entitled to all rights and favors of the Citizens of any other State of the Federation.

2. A minimum of 300,000 Citizens of the European Federation is required to present a draft law to the European Congress. This draft describes only the contours of the goal or is a draft law. It will laid down as a People's Initiative at the Registry of the House of the Citizens. Congress and the President decide on the receptivity of the People's Initiative. The House of the Citizens deals with this People's Initiative according to its legislative procedures. Both Houses of Congress make a final decision regarding this proposal within two years of its registration. In case one House accepts a draft law as a result of this People's Initiative, while the other House rejects this draft or does not make a decision within the determined time period, the President presents the accepted draft law with the advice of each House regarding this People's Initiative to the Citizens of the Federation and to the legislatures of the States. In case the presented draft law is accepted, by a simple majority, by the Citizens and by the States, it will become federal law. Should there be no such majority this People's Initiative is rejected. Should neither House make a decision within the determined time period the President presents the People's Initiative to the Citizens of the Federation. They decide by simple majority whether the People's Initiative should be maintained. In case it is maintained the People's Initiative will be dealt with again by Congress. Congress makes a final decision carrying the overall meaning of the People's Initiative, under the supervision of the President. Congress determines by law the procedure for dealing with a People's Initiative without committing itself to substantive conditions.
3. A person convicted in any State of the Federation for high treason, felony or other crimes, fleeing from justice and found in a different member State, will at the request of the executive authority of the State from which he/she fled, be surrendered to the State with jurisdiction relating to that crime.
4. Slavery or any form of compulsory servitude, except in case of punishment for a crime for which the said person has been lawfully convicted, will be ruled out in the European Federation or in any territory under federal jurisdiction.

Section 2 – The States

1. Full faith and credit will be given in each State to the public acts, records and judicial proceedings of all other States. Congress may prescribe by general law the manner in which such acts, records and proceedings will be proved, and the effects thereof.
2. The States of the European Federation have the exclusive power to regulate matters of Citizenship. A State's Citizenship is valid in any other State of the Federation.
3. States may join the European Federation with the consent of a two-third majority of the Citizens of the acceding State, a two third majority of the legislative branch of the acceding States, a two-third majority of the Citizens of the Federation and a two-third majority of each House of the European Congress, in this order. The European Federation takes note of this consent and acts accordingly.

4. States joining the European Federation after the Constitution having come into force retain their debts and are bound to the laws of the Federation as of the moment of their accession.
5. Any change in the number of States of the European Federation will be subjected to the consent of a two-third majority of the Citizens of the concerned States, a two-third majority of the legislative branch of all States and a two-third majority of each House of the European Congress, in that order.

Section 3 – The Federation

1. The European Federation will guarantee a representative democracy for each Member State and will protect them against an invasion and, at the request of the legislative branch, or that of the executive branch in case the legislative branch cannot convene, against internal violence.
2. The European Federation will not interfere with the internal organization of the States of the Federation.
3. The European Congress has the power to have at their disposal and make all necessary regulations with respect to the territory or other possessions belonging to the European Federation.

Article VIII – Changing the Constitution

The European Congress is authorized to propose amendments on this Constitution, each time a two third majority in both Houses consider this necessary. If the legislative branches of two thirds of the States consider it necessary Congress will hold a Convention with the assignment of proposing amendments to the Constitution. In both cases the amendments will be a valid part of the Constitution after ratification by three quarters of the Citizens of the European Federation, three quarters of the legislative branches of the States and three quarters of each House of the European Congress, in this order.

Article IX – Federal Loyalty

1. This Constitution and the laws of the European Federation, which will be made in connection with the Constitution, and all treaties, made or to be made under the authority of the European Federation, are the supreme law of the Federation. The judges in every State will be bound hereby, notwithstanding any other regulation in the Constitution or the laws of any State.
2. The members of the European Congress, the members of the legislative branches of the States and all executive and judicial officers, both of the European Federation and of the States, will be bound by an oath or affirmation to support this Constitution. But no religious test shall ever be required as a qualification for any office or public trust under the European Federation.

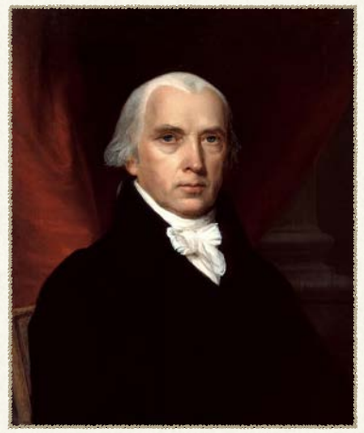
Article X – Transitional Measures and Ratification of the Constitution

1. All debts entered and engagements contracted by States before the ratification of this Constitution will remain valid within the European Federation.
2. The ratification by a simple majority of the Citizens of nine States of the Eurozone will be sufficient for this Constitution of the European Federation to come into force.



LITERATURE

This chapter contains the literature, supporting our view on the necessity to create a European Federation.



James Madison

FAQ 33: Do you really think that the people of Europe would vote for a European Federation?
Yes. Because this Federation is in our opinion the other Europe that Citizens have been aspiring to, for many years. We are convinced that a Federation will be the proper boost to the European continent that is needed now.

FAQ 34: From where do the Citizens of Europe gain the right to vote for this?
From the explanation by James Madison regarding the First Amendment on the American Constitution in 1789: "All power is originally vested in, and consequently derived from, the people... The people have an unalienable right to reform or change their government, whenever it be inadequate to the purposes of its institution." Herewith Madison summarizes in two sentences what has been written since Aristotle until Montesquieu regarding the primary political right of Citizens: to reform or to abolish their government whenever that the government is operating badly.



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ALEXANDER HAMILTON

One of the authors of the famous American Federalist Papers, written between the fall of 1787 and the spring of 1788.

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ALEXANDER PECHTOLD

Former Minister of Administrative Reform in the Netherlands. Now leader of the political party D66 in the Dutch parliament.

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Chapter 1 - Paper 0

ALTIERO SPINELLI

Banned to the island of Ventotene by Mussolini, Spinelli wrote - with Ernesto Rossi - the famous Ventotene Manifest, which is regarded to be the basis of post-war European federal thinking.

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BILL OF RIGHTS

The first ten amendments to the USA Constitution in 1789.

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Chapter 15 - Paper 14

CONFEDERATION

A Confederation is a loosely kind of cooperation between independent states, based on a treaty.

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ERNESTO ROSSI

Co-author of the Ventotene Manifest.

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Chapter 4 - Paper 3

EUROPEAN COUNCIL

The European Council consists of the Heads of States and Government Leaders. It is the prime deciding substructure of the European Union.

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FEDERALISM

A federation is an organization in which the members remain autonomous and sovereign, while ceding a limitative number of powers to a separately functioning body, so that this body can take care of all interests that the members cannot (or no longer) take care of individually. This body for the whole is sovereign with respect to these limitative set of powers but does not possess top-down hierarchical powers. Thus, both levels of governance operate in a sovereign manner. They share sovereignty for the whole and for the members of the organization, for instance the federated member states. This system can only be changed upon the agreement of all governments, of the members and of the whole. See Papers no. 2, 5-8 and 10.

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FERNAND JADOUL

Guest author Fernand Jadoul (1944) studied pedagogy and law. He was employed in the Netherlands at the Council for Child Protection, the local authority of Maastricht, and between 1974 and 2009 at the National Civil Pension Fund, the last fifteen years as Director of Public Affairs. In that position he was responsible for all political and administrative contacts in The Hague and in Brussels. For several years he was chairman of the Committee Towards a new Benelux. Since 2006 he is honorary consul of the Grand Duchy of Luxembourg at Maastricht. In addition, he occupies several administrative functions, including chairmanship of the External Committee for Culture of the Province of Limburg. For more information: www.consul.lux-fjadoul.nl.



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Section 1 - Welcome

GUY VERHOFSTADT

Former Prime Minister of Belgium and now Member of the European Parliament. Author of books about the necessity to federalize Europe.

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HERBERT TOMBEUR

Herbert Tombeur (1949) graduated in 1972 as a master in law at the University of Leuven (KUL, Belgium). In 1998 he became 'master in European politics, cultures & societies' at the Brussels University with the thesis 'Living apart together – the Belgian intergovernmental cooperation in the domains of environment and economy' (published in: 'Public Policy and Federalism', ed. D. Braun, Ashgate, 2000). After working for three years in an insurance company, he was, from 1977 until 1983, an officer in the Belgian Ministry for Foreign Affairs, first in the Direction for Nobility and Heraldry, later in the Legal Service as an adviser in national and international law. In 1983, he left this federal Ministry for the Flemish Authorities. In the Services of the Flemish Government, he worked until 1993 as a legal adviser and counsel in lawsuits, especially in the field of constitutional and administrative law. In 1994, he joins the new Flemish Department of Foreign Affairs, in which he worked until March 2013 as a political and legal adviser and as an intrafederal and international negotiator. As from March 2013 he is working as a consultant in public administration and legal matters. From 1989 on, he publishes abstracts in political and legal journals, recently about federalism, the Belgian federation, Belgian constitutional law, the European Union and foreign policy. Since 1996 he is a lecturer and a monitor of workshops about the same subjects, commissioned by training institutes in Belgium and the Netherlands. See for more information:www.tombeurcounsel.eu.



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INTERGOVERNMENTALISM

Intergovernmentalism is a system in which member states cooperate on the basis of a treaty and to that end cede powers to a central body. Although this seems to be similar to a Federation, the difference is that in an intergovernmental system member states lose their sovereignty due to the fact that the central body makes compromises between the interests of the different member states while forcing, time and again, in a hierarchical manner, a uniform way of operating: centrally imposed uniformity. Notwithstanding the treaty's concept of subsidiarity, which should work as a shield against centrally imposed government. See Papers no. 1, 2, 4 and 10.

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JAMES MADISON

One of the authors of the famous American Federalist Papers, written between the fall of 1787 and the spring of 1788.

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JEAN-CLAUDE JUNCKER

Former Prime Minister of Luxembourg and former Chairman of the Euro Group, a team of experts advising the Council of Ministers for economic and financial policy (Ecofon).

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JEF EUROPE

JEF Europe is a supranational, politically pluralist youth NGO with about 30,000 members in over 30 countries. The goal of JEF is the creation of a democratic European federation as a guarantee for peace and more free, just and democratic society.

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JOHANNES ALTHUSIUS

Johannes Althusius (1557-1638) was born in the Westphalian town Diedenhausen. On instigation of Willem of Orange, he became the first academician in law at the academy in Herborn. He published many political-philosophical writings and is regard to be the founding father of the concept of federalism.

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JOHN JAY

One of the authors of the famous American Federalist Papers, written between the fall of 1787 and the spring of 1788.

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KOMPETENZ KATALOG

The Kompetenz Katalog is a limitative set of powers for the federal body. It has been proposed many times by Germany, but it was rejected every time. Without such a Kompetenz Katalog there will be no Federation because it signifies the vertical division of power as the most essential aspect of a Federation.

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LADY EUROPE

Europa was the beautiful daughter of the Phoenician King Agenor and the sister of Kadmos who, searching vainly for her, founded the Greek city of Thebe. Walking on the beach, Europa saw a nice and quiet bull. As soon as she mounted the bull, the animal run away with her and kidnapped her. The bull brought her to Crete where he revealed himself as the god Zeus (Jupiter). Europa and Zeus made love and had two sons, Minos and Radamanthys. The first one became king of Crete. Both were famous for their law making and justice. Therefor, after their death, they became judges in the Elysium, that is the Underworld, to judge the deceased and to decide about the destiny of their spirits in the Underworld. The origin and the meaning of the name 'Europa' is uncertain. Some linguists refer to the Greek language in which 'europey' means 'bright / wide eyed', others refer to the Phoenician word for 'evening, night (-land/scape)'. The last meaning is used until today to indicate our (sub-)continent, because it is the western part, in fact the Far West, of the mighty continent Eurasia (West > sunset > evening, night).

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LEO KLINKERS

Leo Klinkers (1943) graduated in 1968 from the Faculty of Law at the University of Utrecht in the Netherlands. After a few years working in local government, he became responsible for research and education in public administration at the Law Faculty of Utrecht from 1971 until 1983. He wrote his PhD thesis in 1974 on open access to Government documents. Between 1971 and 1983 Klinkers developed a method for interactive result-oriented policies and regulations. This methodology has been published in a number of books and articles. He left the University in 1983 to become an independent consultant in public administration. Since then he has applied his methodology in the administrations of Belgium, the Netherlands, Portugal, Indonesia, Thailand, Aruba and Suriname. For more information relating to background, publications and projects: www.kppc.nl.



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ROBERT A. LEVINE

Robert A. Levine (1931-2011) was an economist and policy analyst, retired from major posts in the federal government and, from organizations consulting with the government and others.

During the final three years of the Johnson administration Dr. Levine was the chief planner for anti-poverty programs at the Office of Economic Opportunity, then led by Sargent Shriver. From 1975-1979, he was Deputy Director of the Congressional Budget Office. In between, he was employed by the RAND Corporation and the Systems Development Corporation. Dr. Levine had a BA and an MA from Harvard, and a Ph.D. from Yale, all in economics. He has taught at Yale, UCLA, and Stanford. He was in the Navy during the Korean war.



He is the author of The Arms Debate, The Poor Ye Need Not Have With you: Lessons from the War on Poverty, Public Planning: Failure and Redirection, Still the Arms Debate, and has edited several other books. He has also written for The Atlantic and The Milken Review as well as professional journals, and has contributed numerous op-ed columns to the International Herald Tribune and other newspapers. (ex Huffington Post & Washington Post)

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RULE OF LAW

The nucleus of the meaning of the ‘rule of law’ is: nobody stands above the law.

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SUBSIDIARITY

In essence subsidiarity means ‘ leave to the powers of individual states what they van do best’.

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THE FEDERALIST PAPERS

The 85 Federalist Papers were written by Alexander Hamilton, James Madison and John Jay between the fall of 1787 and the spring of 1788. Published in newspapers the Papers intended to convince the Citizens of the thirteen Confederal States to drop the Confederal Treaty and instead to adopt a draft Federal Constitution. Which they did, eventually in 1789. Until today The Federalist Papers serve as the constitutional foundation for preserving the basic principles and standards of USA's trias politica and their inbuilt checks and balances.



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TRIAS POLITICA

The trias politica is the horizontal division of three powers: the legislative, executive and the judicial branch.

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WOODROW WILSON

Woodrow Wilson (1856-1927) was the 28th President of the Unites States of America. Founder of the League of Nations, the predecessor of the United Nations, in 1919.

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