CONSTITUTIONAL AND INSTITUTIONAL TOOLKIT FOR ESTABLISHING THE FEDERAL UNITED STATES OF EUROPE

Striving for federal statehood of Europe is not political ideology but deriving consequences from science

FEDERAL ALLIANCE OF EUROPEAN FEDERALISTS (FAEF)

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The FAEF is happy to work with individuals and organisations that are striving to create the United States of Europe. For that reason, the FAEF as a federation is an open house for any organisation that wants to help increase the degree of organisation of federal movements. See our website www.faef.eu.

Supporting us is highly appreciated.

With this Toolkit, a definitive start can be made to create a federal Europe. Finally. It will not be easy. What has gone wrong in Europe in two hundred years since the creation of the first federal state, the US in 1787-1789, cannot be undone in a short time. But the time is ripe. The longer we wait, the more difficult this necessary intervention in the European system of states will be. In a metaphor: after two centuries of talking about the importance of apples in a Europe without apples, it is time to plant an apple tree.

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The Hague, March 2021

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1. WHY THIS TOOLKIT?

1.1 Introduction

Although this Toolkit is about politics, it is not a political document. It is a scientific treatise on building blocks for the establishment of the United States of Europe. Hence the statement on the title page:

Striving for federal statehood of Europe is not political ideology
but deriving consequences from science

The question then arises: what science? Well, the science that deals with the form of statehood that best connects citizens with governmental decisions to make citizens happy. Happy in the sense of democracy that demands accountability for those decisions. And in the sense of promoting common interests such as security, prosperity, and connection.

Here is a quote from the 17th century philosopher Baruch Spinoza. In his *Ethics*, he answers the question, "How can a man become happy?" with: "Use your brains".

This Toolkit is therefore an instrument for those who want to derive values from science by using their reason.

The philosopher René Descartes thinks in the same way. Chapter 1 of his book 'On the Method' is entitled: "Introduction to the Method: How to Use One's Mind and Find the Truth in the Sciences". He goes on to say: “Nothing in the world is as equitably distributed as common sense. (-) It is not enough that reason is sound; much more important is that it is used well.”

Establishing a federal statehood is a form of organisation. It is a specific organising principle. Unlike a centralized or decentralized unitary state, it is a layered construction - from the bottom up - of a structure in which the relationships between the Citizens, the Member States and a Federal Body are organized in such a way that the centre of gravity of the sovereign powers lies with the Citizens and the Member States. They regulate their own affairs freely. The federal body looks after only a few common interests, without bothering the Citizens and the Member States with hierarchical decisions and with respect for their sovereignty.

Driven by its motto 'federating the federalists', the Federal Alliance of European Federalists (FAEF) considers it its responsibility to offer this Toolkit to the people of

Europe, to their political representatives and to the many federal movements and pro-Europe organizations that exist in Europe.

The constitutional and institutional aspects for the establishment of the United States of Europe described in this Toolkit are the basic material for a European Citizens' Convention[1]. This follows as closely as possible - as best practice - the famous American Convention of Philadelphia of 1787.

That Convention of 1787 designed the world's first federal constitution[2], a brilliant piece of constitutional and institutional legislation of only seven articles, reinforced in later years by twenty-seven amendments[3]. The members of the Convention are also referred to as the 'framers' or 'founding fathers' of the US Constitution. It has immense significance for the people of the United States of America. This is evident, among other things, from the fact that people know that constitution, regularly quote it, interpret it, and actually use it to underpin the significance of political decision-making on the basis of what the people decided in 1787-1789.

Our European Citizens' Convention has the task of improving the draft ten-article federal constitution[4] held by the Federal Alliance of European Federalists[5]. The Federal Constitution of the United States has served as a best practice for designing the European one.

Since 1800, there have been many attempts to make Europe a federal state as well. Every attempt so far has failed. Indeed, immediately after WWII, when an unprecedented political and social movement declared itself in favour of a federal Europe based on a federal constitution[6], the French Foreign Minister Robert Schuman made an unforgivable mistake in the Schuman Declaration of 9 May 1950. A systemic error, about which more in Chapters 2 and 3. In a pressing argument about the usefulness and necessity of federalising Europe, he gave the order to base that federal Europe on a Treaty. And with that, the mandate ended

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[1] See Chapter 7.

[2] There are now twenty-seven federal states in the world. Together they house a bit more than 42% of the world's population. See Annex 1 for more details.

[3] See Chapter 8.

[4] See Chapter 6.

[5] It was designed by Leo Klinkers and Herbert Tombeur in their European Federalist Papers (2012-2013: https://www.faef.eu/the-european-federalist-papers/. Afterwards, that design has been improved several times by Leo Klinkers.

[6] The basis for that enthusiasm was laid by Altiero Spinelli. In his Ventotene Manifesto - written in 1941 (final version 1944) as an exile from Mussolini on the island of Ventotene - he set out standards for the federalisation of Europe. He derived these from the way in which the Philadelphia Convention and the authors of the Federalist Papers - James Madison, Alexander Hamilton, and John Jay - had determined the form and content of the American federal state. Spinelli's significance is discussed in Chapter 2.

up in the hands of the Heads of Government. The only thing government leaders can do is organise cooperation in policy areas by means of a treaty. Anno 2021 that is the Treaty of Lisbon - the playing field of national and nationalist interests in the European Union. The basis of a federal state, however, can never be a Treaty but must be a Constitution of, by and for the people.

This emphasis on 'the people' is also Mario Monti 's view:
"I believe that reforms will not really take hold if they do not gradually come into the culture of the people."

The fifty-five members of the Philadelphia Convention knew the writings of European philosophers such as Aristotle, Montesquieu and Locke. As well as the English Magna Carta of 1215 and the Dutch Placcard of Abandonment of 1581. And of course, their own Declaration of Independence of 1776. They knew their classics: *who reads, learns*. That makes the unachievable achievable.

The European Citizens' Convention which will be discussed in Chapter 7 should, as far as possible, be a carbon copy of the American Convention. Only then do we consider it possible to finally establish a federal Europe after more than two hundred years fruitless efforts. Not only for the unity, security, and solidarity of the peoples of Europe, but also in order to be able to manifest itself geopolitically. The reason for the failure of all attempts since 1800 to establish a federal Europe is that none of them followed the intention and method of the Philadelphia Convention. Let alone borrowing - like that Convention - from the ideas of the European political philosophers that formed the basis of the American federal Constitution.

Too little was and is realised that those who want to shape the future can find sufficient building blocks in the past to know what works and what does not.

In a video from the US National Constitution Center dated 15 February 2021, entitled 'Revolutionary Prophecies: The Founders and America's Future', we find a similar statement: "The America of the early republic was built on a hopeful prophecy that would only be fulfilled if an enlightened people could learn from its past to secure its future." [7]

The Toolkit consists of three parts: Analysis, Synthesis and Supporting Material.

[7] See: https://constitutioncenter.org/interactive-constitution/town-hall-video/revolutionary-prophecies-the-founders-and-americas-future.

1.2 Part A: Analysis

Part A contains the Analysis. It consists of Chapters 2 and 3. These chapters show the motive for putting together this Toolkit. It concerns serious systemic failures[8] of the European Union's intergovernmental operating system on the basis of the Treaty of Lisbon[9]. They are so serious that a foreseeable systemic crisis[10] will cause the European Union to implode. Then a new European system of states will emerge[11].

Given the history of the state system in Europe, this can only be a federal state. This history shows an evolution with two striking changes in the way Europe was governed.

From the era of the Roman Empire until 1648, there was constant fighting. Think of the Crusades from 1095 to 1271 and in the centuries thereafter the constant violence of kings, counts, dukes, cities, popes, and tribes. A form of noble-anarchy in the sense of the absence of a form of government based on common principles among the mainly noble ringleaders of that violence.

With the Peace of Westphalia of 1648, based on the Peace of Münster and the Peace of Osnabrück, this came to an end. Europe then had a new state system, a system of sovereign nation states. The aim was to put an end once and for all to the shedding of blood on European soil. Unfortunately, it failed. It is true that states were formed, with governments, borders, laws, and citizens[12] (no longer subordinate to noblemen or cities) which did indeed reduce the number of wars. But the shedding of blood continued on an even larger scale.

This was the phase of so-called nation-state anarchy, until 1945. Conflicts arose between the sovereign states and their need to conquer countries. In the absence of transnational governance to nip such issues in the bud and create common

[8] Chapter 3 lists the most important system errors of the treaty-based EU intergovernmental governing system.
[9] Intergovernmental governance is cooperation between governments, in certain policy areas, based on one or more treaties. Some people use another term for this: multilateralism.
[10] That is the subject of Chapter 2.
[11] The same is true of the global system of states under the umbrella of the United Nations. Like the European Union, the UN is also at the end of its political life cycle, waiting for a serious crisis to occur and then evolving towards a federal world government. The evolution of state systems after a severe systemic crisis is discussed in Chapter 2.
[12] To quote Spinoza: "People are not born as citizens but made as such."

European interests, warfare continued. Until WWI and WWII. In 1941, the Atlantic Pact of President Franklin Delano Roosevelt and Prime Minister Winston Churchill

laid the political foundation for a new global state system based on a system of treaties: The United Nations. Then in 1950, the Schuman Declaration (about which more in Chapters 2 and 4) laid the political foundation for a new European system of states, the system of intergovernmental government, also based on treaties. First under the name of the European Coal and Steel Community, then with the name of the European Economic Community, and since 1999 the European Union.

The Analysis begins in Chapter 2 with a historical description that legitimizes the claim that state systems evolve in an evolutionary way. Just like the evolution of mankind. Although not in a gradual process of millions of years, but as a result of severe systemic crises within a few centuries. If - as the Analysis argues - the European Union were indeed to collapse in the near future due to a full-blown systemic crisis, then on the basis of that evolutionary principle the resulting new European state system could only be a federal Europe.

Chapter 2 also describes how it came about that the Convention on the Future of the European Union of 2001 failed and only resulted in the Treaty of Lisbon in 2009; a legal monster in the form of an accumulation of national interests; a shameful example of conflict with principles of correct legislation. A sign of the weakness of the scientific foundation of the European Union, and therefore of its low moral standing, internally and in geopolitical terms. In the words of professor 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."

Chapter 3 deals with the systemic failures of the European Union. The predominant feature of a system with systemic failures is the fact that they erode the system, lead to an identity crisis, and finally cause the system to implode or explode.

The analyses in Chapters 2 and 3 are the motivation for the Federal Alliance of European Federalists to design this Toolkit. We must prepare for the advent of a new European system of states following an impending serious systemic crisis of the present European Union. We do not believe that the European Parliament, the European Commission, or the European Council are in a position to take the

initiative themselves to abolish the European Union in its entirety and to create a federal state under the name of the United States of Europe. They cannot. Every system attracts its own kind of people: 'birds of a feather flock together'. In this case, the people who take it for granted that the European Union is an intergovernmental system. Someone who starts working with federal visions in that system in order to transform it from the inside into a federal state will be swallowed up by that system or put out of action. Then a choice has to be made. Either leave, or seek refuge within the system, like, for example, the Spinelli Group of (former) Members of the European Parliament who advocate a federal Europe but have chosen to realise this through yet another adaptation of the treaty-based EU system. That is not possible. A federal state is based on a Constitution of, by and for the people, in which representatives of the people, with a democratic mandate, hold administrators accountable for the way in which they implement the decisions of the legislature[13]. To assume that repeated adaptations of the Lisbon Treaty will automatically create a federal Constitution is like assuming that you can turn lead into gold.

So, others must make this paradigm shift happen. In view of the expected systemic crisis[14] of the Union, a system of constitutional and institutional affairs must be designed now in order to start filling the administrative vacuum immediately after the crisis. This is to prevent a few autocrats and despots from dividing Europe among themselves. Political decision-making based on science will have to save European democracy. Whether the term 'paradigm shift' is the best word in this context is debatable. We are facing an administrative revolution that in terms of necessity and complexity has never taken place before.

1.3 Part B: Synthesis

With Chapters 4 to 7, Part B contains the Synthesis: the constitutional and institutional building blocks for this operation. What do we mean by 'constitutional and institutional'? Constitutional' means that something is based on an agreement, which lays the foundation for the functioning of an organisation. This word has the same root as 'constitutive', 'establishing', 'founding' or 'instituting'. Thus, one speaks of a constitutive judgment when that judgment creates a legal status. If that

[13] We have a reservation here. Not all 27 existing federal states are established according to standards of federal statehood. In particular, federations created from the top down, and not bottom up, still have centralist characteristics to some extent. For example, those of Germany, Belgium, and India. This creates the assumption that a proper public federation can be established by administrators. Quod non.

[14] See Luke McGee, CNN, 14 February 2021, The EU is facing the most serious crises in its history. Many are wondering if anyone's really in charge: https://edition.cnn.com/2021/02/14/europe/europe-crises-intl-analysis/index.html.

basic act concerns a State, it is called the Constitution. 'Institutional' refers to its organisational interpretation. Together - as 'constitutional and institutional' - they signify the legal and organisational organisation of the State.

In Chapter 4 we will return to the basis, the past, for that order. If you get lost, as is the case with the treaty-based intergovernmental system of the EU, then it is not wise - as will be explained in Chapter 2 - to keep walking down the wrong path, and thus to get even further off course. It is better to return to the point where you took the wrong turn.

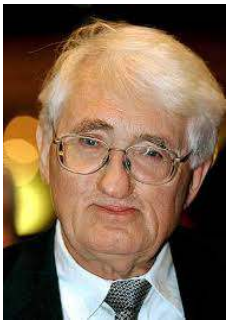
That wrong turn took place on 9 May 1950 with the Schuman Declaration: the wrong route that led to a system of Treaties instead of a federal Constitution. But to show why that was a fundamentally wrong turn, we have to go back to the Federalist Papers of James Madison, Alexander Hamilton, and John Jay of 1787-1788. As systems analysts avant la lettre, they dissected the Articles of Confederation, the treaty of the Confederation of the Thirteen States (former British colonies), for its serious systemic flaws, which made the treaty itself, instead of binding, a dissolving treaty. Just as the Lisbon Treaty now acts as a divisive force between Member States of the Union.

Chapter 4 thus shows - in the view of the authors of the Federalist Papers - why one needs a Constitution for a federal state. This was taken up in WWII by Altiero Spinelli in his Ventotene Manifesto, very briefly in 1945-1946 appreciated as the required basis for a federal Europe but from 1946 onwards abandoned step by step to take that wrong turn definitively in May 1950. This process is described in detail in Chapter 2.

Chapter 5 deals with popular misconceptions about federal state formation. They are as persistent as conspiracy theories. It is almost impossible to dispel them because they are not about knowledge but about psychology and psychoanalysis. Once a misconception about federal statehood is in someone's mind, the mechanism of cognitive dissonance[15] comes into play: the inability to give knowledge a place in the brain that would allow unfounded opinions to disappear. If this knowledge were to be admitted, it would be experienced as a negation of one's own person and of the values this person espouses. With examples and drawings, Chapter 5 attempts to provide a body of knowledge that might encourage some to abandon their erroneous conceptions of federal statehood.

[15] Cognitive dissonance indicates an unpleasant tension when someone learns of facts that contradict one's own beliefs. A disharmony between facts and opinion. Instead of accepting that knowledge, such a person searches for arguments to let their own conviction prevail. This is what happened to President Trump's supporters to an extreme extent. Millions of his fans continue to believe that Trump won the 2020 election, and that Biden stole it.

As European political leaders weigh up the values of common European interests against the national interests for which they have been sent to Brussels, they serve as role models for their populations, feeding false views about a federal Europe. To assume that this type of politician would be able to replace the intergovernmental EU with a federal Europe is best answered by saying that those who cause the problems are not the people who can solve them.



A quote[16] from the German philosopher Jürgen Habermas is appropriate here:

"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."

Because the European Union is merely an accumulation of national interests, it is no more than the sum of its parts. Partly because of this, Europe plays no significant role in geopolitics. Only with a federal Europe will the whole be more than the sum of its parts.

Chapter 6 is the draft federal constitution for Europe. As already mentioned, the American one has been used as a best practice. But ours is adapted to European views, including a Preamble that highlights the values[17] of European federation, includes forms of direct democracy based on the Swiss Federal Constitution and anti-corruption provisions. The American federal constitution did not have an Explanatory Memorandum. Our constitution does contain that important text, setting out the meaning of the articles. And why a number of articles differ from those of the US Constitution.

Chapter 7 is about the design of the Citizens' Convention. Its task is to improve our draft ten-article federal constitution for Europe. We repeat that this Convention works as much as possible like the one in Philadelphia in 1787. The difference, of course, is that Philadelphia had to draft the federal constitution from scratch, whereas the European constitution is already in draft form. But of course, it can be improved. And that is the task of our Citizens' Convention.

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[16] Jürgen Habermas, 'The crisis of the European Union. A Response', 2013.

[17] See for European Values Colonel Jean Marsia (President of the European Society for Defence INPA), A federal constitution for the United States of Europe, Why and How?, European Society for Defence, p. 13.

It will work under a number of conditions, including the involvement of European citizens. Essential is the condition that the draft of ten articles is not extended with more articles. Before you know it, it will become a monster like the Lisbon Treaty with more than 400 articles, which makes a mockery of elementary principles of correct legislation and, with its numerous exceptions to general binding rules, serves only to protect national and nationalist interests. Behind the Lisbon Treaty, there are no less than thirty-seven comprehensive protocols that specify the operation of articles of the treaty or exempt their operation for certain countries. This is followed by a further sixty-five declarations in which countries state what they consider to be applicable or not to their own country. Anyone with a decent education in constitutional law knows that such a Treaty is the basis for tensions and conflicts. That must not happen with the federal constitution for the United States of Europe.

A quote from Charles-Louis de Montesquieu is appropriate here:
"If there would be something useful for my country, or if there would be something useful for Europe, but that is harmful for humanity, then I would consider that as a crime."

1.4 Part C: Supporting material

Chapters 8 to 11 in Part C contain supporting material. It concerns constitutional and institutional elements of the American federal system. It is not the intention to copy it blindly, but to learn from it.

Chapter 8 describes the procedure for amending the US Constitution, the twenty-seven amendments, and an explanation of those amendments. Valuable material for the Citizens' Convention as a basis for assessing and possibly improving the ten articles of our draft European Constitution.

Chapter 9 is a treatise on three different proposals for further amendment of the American Constitution. This is a recent project of the US National Convention Center that asked three different groups of constitutional scholars to offer ideas on modernizing the Constitution: a group of conservatives, a group of libertarians, and a group of progressive experts. The result was surprising: more similar views than expected. It undoubtedly contains fruitful ideas for the Citizens' Convention to improve our draft federal constitution.

Chapter 10 looks at the internal organisation within the US Congress. Both the House of Representatives and the Senate are actually the bodies that draft laws. The President and his Cabinet implement them. This is different from the situation in most European Member States. In the European Union, the governments of the Member States are, in fact, the legislators. Gradually, therefore, the centre of

gravity of power has shifted to administrators and the role of the people's representations is often no more than to accept those bills, with or without some amendments. The role and significance of the Citizens has been pushed far into the background. That chapter also describes the principle of 'Implied Powers' such as 'Congressional Oversight', 'Executive Orders' and 'Judicial Review'. As well as an overview of the President's Executive Departments and of the Federal Agencies. Again, we might learn from it.

Chapter 11 deals with the meaning of 'the political office' and the role of transnational political parties in selecting the best representatives of the people of Europe. They are responsible for placing people on electoral lists for a position in the federal European Parliament. The latter is elected on the basis of the so-called 'popular vote' in the form of proportional representation. Transnational political parties to be founded are expected to make an unprecedented effort to recruit, select and educate potential MEPs to a level never before achieved in the history of Europe. We set the bar very high. Also, by a special addition of checks and balances on the competence and suitability of representatives of the Citizens and of the States.

1.5 Why, How, Who and When[18]

This Toolkit answers the questions:

- Why does Europe need the federation of the United States of Europe, and why will it undoubtedly happen?
- How should it be organized?
- Who should take it on?
- When should it happen?

This of course begs the question: where does FAEF get the audacity to assume that with this Toolkit, the powerful European Union can be exchanged for a federal Europe? The answer is simple. The European Union is a giant on shaky feet, shooting itself in the foot with its outdated and flawed intergovernmental operating system. In the words of Malcolm Gladwell[19]: "Giants are not what we think they are. The same qualities that appear to give them strength are often the sources of great weakness." Chapter 2 provides detailed evidence of this.

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[18] Friends of FAEF wrote a personal reply on these four questions: Joel Boehme & Mihaela Siritanu, Javier Giner, Jean Marsia and Yannis Karamitsios. See their articles in the Magazine Europe Today: https://www.europe-today.eu/2021/03/03/united-states-of-europe-why-how-who-when/

[19] Malcolm Gladwell, David and Goliath, Underdogs, Misfits, and the Art of Battling Giants, Little, Brown, and Company, 2013, p. 7.

PART A: ANALYSIS

2. THE EVOLUTION OF STATE SYSTEMS AFTER SYSTEM CRISES

2.1 Introduction

As long as everything is going well, people have no reason to change[20]. If there is a problem, people try to solve it. Sometimes things go well for a long time. Sometimes it only lasts for a short while. If a new solution only offers a new balance for a limited time - while problems keep arising - some people are prepared to sit back, survey the situation, and intervene with fundamental changes. Changes that create an equilibrium again for a long time.

But most people do not do this and wait for a predictable crisis. With all the consequences that entails. Those who warn in the interim are not heard as whistleblowers and are pushed aside.

This behaviour of staying put until a crisis wipes you out is familiar from metaphors like rabbits that stare petrified into the headlights of a car until they are run over. Or frogs jumping out of a pan of boiling water but staying in it when the water is heated from cold to boiling.

It is the same in political systems. The operation of intergovernmental governance in Europe since 1951 has always been accompanied by tensions and conflicts. This chapter shows how, within the European system of states, tensions were temporarily defused by means of artificial solutions, only to discover that sticking plaster on stinking wounds no longer helps. The European Union has reached the end of its political life cycle and is on the verge of collapse.

Instead of realizing as early as the 1950s that the choice of an intergovernmental system was the wrong way to go about achieving the goal of a united Europe, it has continued, step by step, down a path that ultimately leads to a ravine. The ravine as a metaphor for a predictable comprehensive crisis of the European system of states.

This chapter contains the evidence for that proposition. But it also contains the interesting fact that five centuries of European history show that, after a serious crisis of governance, a new system of states naturally emerges. Of a higher quality than the previous one. An evolutionary shift that we now call a paradigm shift.

[20] In the words of Niccolò Machiavelli in Il Principe, Chapter III: "For the rest, people keep quiet as long as their former living conditions are maintained, and no other customs and practices are introduced."

The first took place at the Peace of Westphalia in 1648 with the birth of the sovereign nation states. It put an end to the chaos of battles between tribes, counts, dukes, cities, kings, and the Pope and created a system of states with borders and citizens, with the promise that they would not attack each other. Despite this reordering of the administrative system, wars did not stop. This led to the Napoleonic Wars, World War I and World War II. Each followed by a new European system of states. After WWII the fourth reordering was matched by a global state system in the form of the United Nations. Both in the form of intergovernmental governance based on treaties.

The expected systemic crisis of the current European system of states[21] will cause that intergovernmental system of governance to evolve into a federal European system of states. This Toolkit contains a coherent package of knowledge that can be picked up immediately when the worst of the systemic crisis is over. Also, with the aim of preventing the systemic crisis from being used by autocrats and despots to divide Europe among themselves.

Part A is there to show that the European Union has arrived in circumstances that precede - and are a warning signal for - a serious systemic crisis. The sentiment of a crisis in present-day Europe can be worded in many different ways. We choose a quote by Rik van Cauwelaert, director of strategy of the Belgian Magazine Knack:

"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."

[21] The same applies to the United Nations. Its international credibility has fallen to zero and, like the European system of states, it will collapse and then evolve into a federal system. See the article 'For the Biden Administration: Return to Pre-Trump Multilateralism Not an Option', by Richard Kinley, Georgios Kostakos and Harris Gleckman: https://katoikos.world/editorials-op-eds/for-the-biden-administration-return-to-pre-trump-multilateralism-not-an-option.html.

2.2 The scientific framework

The scientific framework is partly derived from the book 'De Onvermijdelijkheid van een nieuwe Wereldoorlog' (The Inevitability of a New World War) by Dr. Ingo Piepers[22]. Piepers - at the time commander of the Dutch part of the United Nations Rapid Reaction Force to end the war in Bosnia (1992-1995) - uses a number of sciences to investigate and explain why and how wars arise. And what effects this has on changed state formation once peace has been restored.

The essence is that after four systemic wars between 1480 and 1945, each time a new European state system developed. Piepers sketches the inevitability of a fifth system war - or system crisis - within a few years. The effect will be that the current intergovernmental operating system of the European Union will make way for a federal statehood. The following quote from Piepers is relevant in this context (p. 208):

"A systemic war is a fundamental change and is not limited to war activity in a limited sense; there is war activity combined with alliance building and a political negotiation process, in which agreements are made between great powers about spheres of influence and the rules of play for a new international order. A system war is therefore also about values. It is actually better to talk about a system crisis instead of a system war."

One of these sciences is systems theory. Piepers groups concepts from sciences such as thermodynamics, ecology, demography, military science, political science, and complexity science around systems theory. Through analyses and syntheses of political, social, demographic, anarchic and autocratic developments in the context of systems theory and other natural laws, he shows which principles and mechanisms influence the dynamics of war and the resulting development of the European and global system of states. Throughout the years from 1480 to the present.

He does not talk about federal statehood, neither European nor global. But he does state that the next systemic crisis, which he foresees between 2020 and 2022, will lead to a completely new European and global system of states.

[22] Ingo Piepers, De Onvermijdelijkheid van een nieuwe Wereldoorlog, (The inevitability of a new world war), Prometheus Publishers Amsterdam 2020. This book is a continuation of Piepers' PhD thesis 'Dynamics and development of the international system: a complexity perspective' (2006), 'Warning. Patterns in War Dynamics Reveal Disturbing Developments' (2016) and from his study 'On the Thermodynamics of War and Social Evolution' (2019).

2.3 Open System and Entropy

The core of systems theory is the concept of the 'open system', an element from thermodynamics[23]. Virtually every organisation is an open system. Apart from exceptions[24], most organisations have an open connection with the world around them and are subject to its influences. If they adapt to these influences, i.e., to the effects of the interaction between the organisation and the outside world, they will extend their existence. If they close themselves off from these influences, they will eventually suffer an identity crisis and go under.

To prevent this collapse, organisations must store more energy than they consume. This applies just as much to organisations called 'people' as to those called 'associations', 'companies' or 'states'. Someone who does not eat or drink, and thus consumes more energy than he stores, will die after a few weeks. Consuming more energy than you can store is called 'entropy'[25]. It stands for disorder, decay. So, in order to survive (order) - or to postpone decline (disorder) as long as possible - organisations must counteract entropy by constantly storing more energy than they use. And this can only be done by being open to the interaction with the environment and adapting to it.

Piepers calls the interaction between an open system and its environment a 'dissipative structure'. This ensures - if used consciously - that an organisation actually stores more energy than it uses and therefore develops the strength to keep renewing. The natural law of entropy states that order only increases where there is more disorder. Or: the natural law of entropy determines that every natural process produces entropy as a by-product, and that in order to create and maintain order and organisation, constant labor must be performed to prevent disorder and decay.

The principle of entropy explains why and how, with some regularity, wars of such magnitude arise that they can be called system wars, leading to an entirely new version of state systems. They are lawful responses to such an increase in disorder that only a major crisis can bring about a new order. This corresponds with the saying 'don't waste a good crisis', however cynical that may sound.

That entropic disorder and decay are related to a new and better-ordered European system of states. So, after a major crisis. The current treaty-based EU system of states is unable - as will be outlined later - to prevent entropic decay and

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[23] See David Easton, 'The Political System' (1953) and 'A Systems Analysis of Political Life' (1965).
[24] North Korea can be seen as a state in the sense of a closed system. Interaction with the surroundings of that state is minimal.
[25] Derived from thermodynamics, this concept is central to systems theory and cybernetics as a measure of disorder or decay of a system.

disorder and is thus organising its own downfall. By failing to adapt, the system is hollowing itself out and heading for implosion. Due to systemic failures (see Chapter 3), which force problems to be countered with new problems, the EU runs out of energy. The ensuing systemic crisis then forces a new order[26], in this case the order of a federal state based on a federal Constitution instead of an intergovernmental operating system based on a treaty. This process will be described later.

2.4 Negative and positive feedback

What appeals in Piepers' way of thinking is the consistent application of two concepts from systems theory, annex cybernetics[27]. These are the concepts of negative and positive feedback.

Negative feedback is derived from the Latin word 'negare'. It means 'to deny', 'to undo'. Negative feedback is back coupling. This means that a system in which negative feedback exists can undo a movement - for example, a deviation from a policy course - and thus achieve equilibrium. In the event of a new deviation, a new balance must be created by correcting the deviation. And so on. It is a control mechanism that, by undoing deviations, aims to restore order or balance after a certain degree of disorder.

Some examples. If you are able to put the tip of your index finger on the tip of your nose, then you have a correctly functioning negative feedback mechanism through the brain, cerebral cortex, eyes, nerves, and muscles. In a non-visible process of continuous adjustment of the course that your finger takes, that finger arrives at your nose. If you suffer from Parkinson's, it doesn't work. You notice that you are constantly wrong, but the correction of the deviation is always exaggerated. Another example. Suppose you have to cycle five hundred meters in a straight line. That is not possible. Regularly, you are a little to the left or right of that line. You keep making a zigzag movement - oscillating - which is nothing but a large series of negative feedback movements that, in striving to reach a point of equilibrium again and again (namely, riding exactly on that line), eventually bring you neatly to the end point. The thermostat of the heating or air-conditioning system is also a negative feedback mechanism: if the temperature gets higher than set, it switches off; if it drops below, it switches on. The navigation system in your car also works

[26] In the words of Niccolò Machiavelli: "For one change always lays the foundation for another to follow." In: Il Principe, Chapter II.

[27] This has been further developed in the science of cybernetics. See Prof. Dr. S.T. Bok, 'Cybernetics. How do we direct our lives, our work and our machines?' The Spectrum 1957. See also Donella H. Meadows, 'Thinking in Systems', Earthscan 2009. And her 'Leverage Points. Places to intervene in a system', The Sustainability Institute 1999. See also on YouTube the Donella Meadows Project for a number of very enlightening videos about systems theory.

on the basis of negative feedback and takes you where you want to go, provided it is not outdated or faulty.

The most extraordinary example of a negative feedback mechanism is the concept of 'trial and error' in scientific methodology. Conceived by Karl Popper in the 1930s, it refers to the phrase: 'trial motivation and error elimination'[28]. All scientific progress is based on this principle: someone dares - is motivated - to take a position on the basis of facts and arguments; that position remains valid until someone else takes a better position with better figures and arguments, thus refuting the first position as error. The scientific term for this form of rebuttal is falsification.

So, it also applies to this Toolkit. The views expressed in these chapters, based on facts and arguments, will stand until someone else provides better facts and arguments to refute them.

Within constitutional law, the checks and balances that separate the trias politica (the legislative, executive, and judicial branches) are also a special kind of negative feedback. Every time one of the three state powers moves too far into the territory of another branch, the latter has some powers to chase the 'intruder' back into the box. The best example of this is the checks and balances in the American federal constitution (about which later in Chapter 6). Despite all his attempts to demolish the federal constitution, President Trump did not succeed in breaking the checks and balances[29].

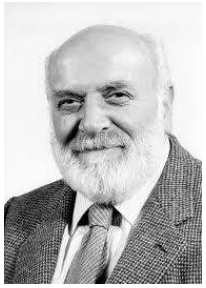
In the Ventotene Manifesto, Altiero Spinelli[30] - founder of post-war thinking in federal statehood - describes the process of refutation as an instrument for improving knowledge as follows:

[28] Karl R. Popper, Objective Knowledge, An Evolutionary Approach, Oxford at the Clarendon Press, 1979, p.21.

[29] See Mauro Casarotto, 'The Trump Case: seven lessons it taught us and a final question for Europe, in: Europe Today Magazine of 20 Januari 2021: https://www.europe-today.eu/2021/01/20/the-trump-case-seven-lessons-it-taught-us-and-a-final-question-for-europe/.

[30] Later on, in this chapter, Spinelli's prominent role in post-war thinking on federal state formation in Europe will be discussed in detail.

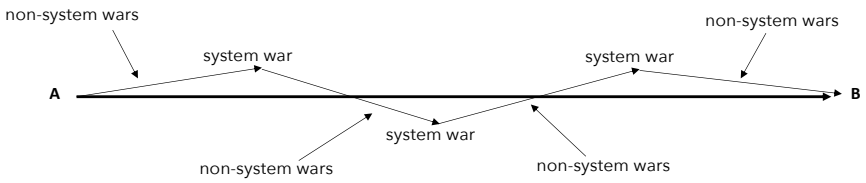
"The permanent value of the spirit of criticism has been asserted against authoritarian dogmatism. Everything that is affirmed must prove its worth or disappear. The greatest achievements of human society in every field are due to the scientific method that lies behind this unfettered approach."



Negative feedback is therefore the universal goal-finding mechanism. There is nothing more beautiful in the world. No goal finding is possible without a well-functioning negative feedback mechanism. In the 1930s, war materials began to be designed based on the system-theoretic/cybernetic target-finding technique of negative feedback. The 'homing torpedo' and the 'cruise missiles' are probably the most professional - but also the most gruesome - applications of this. Although a rocket that neatly delivers astronauts to a space station is perhaps an even more professional proof of the effect of negative feedback. A fault in the rocket's negative feedback mechanism means that those astronauts can only wave at that space station when they pass by.

Below is a drawing of how negative feedback - within Piepers' analytical framework - works on a course from A to B. By way of explanation: if all the superpowers participate in a war, there is a system war/system crisis after which a whole new order emerges. If not all the great powers take part, we speak of a non-system war/crisis. This only corrects the balance temporarily.

Piepers' analysis - designed by me in the context of negative feedback - is as follows:
1. In a transitional phase from 1480 to 1945, four system wars took place.
2. After each system war, the state system changed.
3. Each of those system wars was the result of a war cycle of non-system wars. The aim of these non-system wars was to rebalance temporary the existing disorder. That is how the negative feedback mechanism works in the phase of non-system wars: creating homeostasis until a new non-system war is needed.
4. This works until the disorder becomes so great that a systemic war, as a comprehensive systemic crisis, has to create a new order, a new system of states. This is a form of meta-negative feedback that creates a new order, with a homeostasis/balance of a different level.
5. The transition after the last system war, World War II, created that new order in the form of a new European state system, plus a global state system in the form of the United Nations.
6. Piepers points out that a new war cycle has been developing since 1945, i.e. now a global war cycle that will unleash a new systemic war around 2020-2022.
7. In Chapter 4, I describe how I endorse this line of thinking for this new, now global, war cycle, based on the failures of the European and global system of states since 1945.

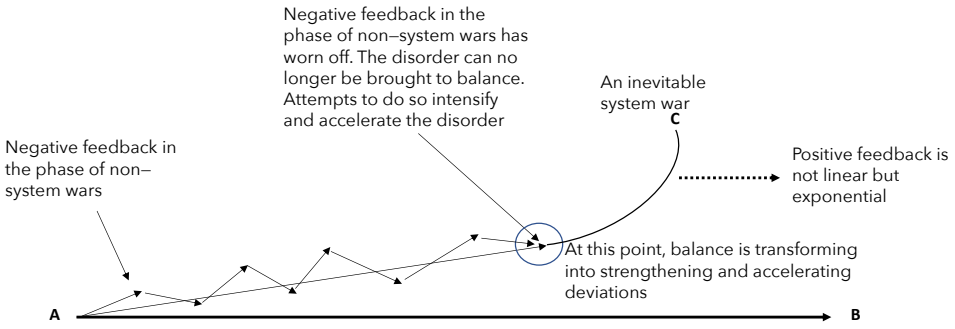


Positive feedback is forward coupling. It is not the undoing of a movement, but an acceleration and strengthening of it. It is a neutral concept that has nothing to do with 'positive' in the sense of responding pleasantly to someone's assertion in a

conversation. It is an acceleration and strengthening of a movement. Under certain circumstances, this can turn out to be quite negative. Namely, in situations where one strives to achieve a goal, but a deviation from the course occurs on the way to that goal and one does not react to that deviation with a negative feedback reaction, but with a positive one. The result is then acceleration and reinforcement of the deviation as a series 2-4-8-16 and so on.

Positive feedback as reinforcement of a deviation is thus reinforcement of entropy in the sense of disorder. Positive feedback therefore works exactly according to the principle of the law of entropy: as disorder increases, the desire for order increases, and a new international order of states follows a systemic crisis as meta-negative feedback. For the record: the addition 'meta' is on our behalf. Because Piepers places a heavy emphasis on the fact that a systemic war creates an entirely new order - and with it, a provisional new equilibrium - this is, as negative feedback, of a higher order. This is where the use of the word 'meta' fits in. The drawing below shows how positive feedback works on a course from A to B.

Piepers' analysis - designed by me in the context of positive feedback - is as follows:
1. A war cycle of many decades consists of a number of non-system wars aimed at rebalancing the unbalanced status quo. So not to create a new order, but to restore the existing order.
2. During that period, there has been relative stability.
3. After some time that no longer works. Disorder grows, attempts to eliminate disorder create more misery, which brings the then prevailing system of states into a critical phase.
4. This leads to a situation that can also be described as 'When the shit hits the fan'. The start of an all-embracing system war that creates an entirely new order.
5. Note: the acceleration and strengthening is not linear but exponential. Compare it to an avalanche: it starts small but develops faster and wider on its way down.



Piepers describes the mechanism of positive feedback with numerous examples related to the origin of wars. Later on, in 2.11, a 'gap' is closed in the same way between Piepers' explanation of the causation of wars through the interaction of negative and positive feedback on the one hand, and his observation that after a world war a new system of states emerges on the other. This makes clear how system errors and resulting crises within the European state system after World War II not only contribute to the system crisis predicted by Piepers, but why they also lead to the transition of the democratically dying intergovernmental European Union into a democratically vital federal Europe.

Next, the concepts of negative and positive feedback are joined by a third: feed-in. In short:

- while negative feedback refers to the restoration of equilibrium by undoing deviations from the course through which an objective can be achieved (the end justifies the means);

- while positive feedback is about reinforcing and accelerating course deviations through which one gets further and further away from home (the means justify the end);

- feed-in means an adjustment of the goal, not of the course. Where positive feedback (i.e., increasing disorder) causes a system war - feed-in offers the choice for the creation of a new - higher - order. In this context, a higher order of the European state system, a federal state.

The core of Piepers' work is the inescapability of a systemic crisis resulting from series of positive feedback movements: reinforcing and accelerating deviations that lead to more and more disorder. The inevitability of the crisis is at best occasionally postponed by small negative feedback corrections (non-systemic crises) of those accelerating and amplifying deviations, which in turn create a period of temporary equilibrium. This will all be explained in more detail later in drawings.

For now, a recent example of a non-systemic crisis that resolves a conflict by means of negative feedback, thus temporarily restoring balance. It played out in early December 2020 at the top of the European Union. A majority in the European Council no longer agreed with the measures with which the leaders of Hungary and Poland - Viktor Orbàn and Mateusz Morawiecki - demolished their rule of law and gave themselves a place above the rule of law. Threatened with sanctions by the Council, they responded with a veto on the multiannual EU budget and the Recovery Fund[31] (together 1,800 billion euro) with which the EU wanted to keep nine countries that were seriously affected by the coronary crisis on their feet. The European Council accepted a compromise proposal from Hungary and Poland that - in short - means postponing sanction measures in order to first submit them to the opinion of the Court of Justice. Manfred Weber, the leader of the Group of the European Christian Democrats in the European Parliament, also thought it was a good idea to depoliticize the conflict in this way. This is not depoliticizing,

[31] On that Recovery Fund see Leo Klinkers' article: Is the EU's 750 Billion Recovery Fund a 'Hamiltonian moment'? in: Europe Today Magazine 1 June 2020.

however, but resolving a non-systemic crisis by juridicizing the conflict: moving it from the political table to the table of judges. There are few worse decisions. A political body that does not solve its problems in the political arena but passes them on to the judiciary erodes not only itself but also the judiciary. After which, after a while, the same conflict erupts again. Followed by new ones. Please note that this has nothing to do with the nature of a federal state but with the lack of quality of the politicians involved. See Chapter 11 for the requirements for fulfilling the political office.

2.5 The advent of nation-state anarchy[32]

Around the end of the 15th century, state-like structures began to develop in Europe. The dominant empire at that time was the so-called Holy Roman Empire (of the German Nation). The words in brackets belong here although they are rarely used. The word 'German' makes it clear that it was a very large empire in Central Europe, consisting of several hundred kingdoms, duchies, counties, principalities, dioceses, archdioceses, and cities. All under the authority of an Emperor. And all of them regularly quarreling with each other[33]. Note: the number of these hundreds of state-like territories of the 15th and 16th centuries with approximately 80 million inhabitants has now shrunk to twenty-seven states within the European Union with almost 450 million citizens (the number does not include the United Kingdom).

The first paradigm shift took place in 1648. That year is crucial to understanding the concept of nation-state anarchy. A well-known, but unfortunately seriously underestimated concept. It cost many millions of lives between 1648 and 1945. And is now - in the form of the growing populist nationalism in the EU - one of the causes of an increasing number of conflicts within the European Union.

The increasing rivalry between all kinds of parties from 1480 onwards - with ever more war machinery - led in 1648 to the Peace of Münster and the Peace of Osnabrück. Together, these two peace treaties formed the basis for the Peace of Westphalia in the same year. Although state-like developments took place between 1480 and 1648, the formalization of the concept of the sovereign state took place in the year 1648: the birth of the nation states. States acquired borders,

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[32] This Toolkit discusses the concept of nation-state anarchy as a curse that has caused wars for many centuries. And still today, growing nationalistic-populism in the EU creates tensions, conflicts between EU member states and between some member states and 'Brussels'. However, this should not be confused with the political philosophy that focuses on anarchy as a form of state. See Robert Nozick, Anarchy, State and Utopia, Oxford, 1974. And Martin G. Plattel, Utopia and Critical Thinking, Ambo/Anthos BV, 1970.

[33] See Rolf Falter, 'Belgium, a history without a country', De Bezige Bij 2012. And: 'The birth of Europe. A history without end', Polis 2017.

inhabitants were no longer the subjects of a noble person, but citizens of a state. National identities emerged, states did not have to listen to orders from others, nor tolerate being attacked and occupied.

But what happened? Those nation states simply continued to wage war. Why? Because there are lawful patterns that lead to wars. And they continued until 1939-1945. In 1945 another system transition, a phase transition, took place in the sense of the birth of a new European and global system of states; the European Union and the United Nations respectively.

What has been learned after 1945 from all those wars from 1480 to 1945? Nothing at all. If one had realised in 1945 (the birth of the United Nations system of global states) and in 1951 (the birth of the new European system of states) that the Treaty of Westphalia was not strong enough to prevent new conflicts and wars, one would not have contemplated - and certainly not after the failure of the League of Nations on the basis of the Treaty of Versailles 1919 (see Chapter 4) - to give the global and the European system of states the basis of a Treaty again after 1945. Instead, one would have created - with knowledge of federal matters - a federal state on the basis of a federal Constitution. The result, as demonstrated later, is that this fundamental system error (see Chapter 3) has built up so much entropy (disorder, decay) over the past seventy-five years that both systems of states - the European Union and the United Nations - have come to the end of their life cycle and are about to collapse.

One of the reasons for the continuation of wars, despite the new international order after 1648, is thus called 'nation-state anarchy'. The Greek word 'anarchy' is composed of 'an' = 'not'. And 'archein' = 'to rule', 'to govern', 'to reign'. In this sense, 'nation-state anarchy' means the absence of a transnational[34] government capable of preventing and/or resolving conflicts between states. Those who know the standards of federal statehood know that only that type of state formation (no intergovernmental treaty, but a federal constitution) can resolve the absence of transnational governance. As a result, federal state formation is that unique instrument to establish peace. By the way - contrary to the claim of (populist) nationalists and others who do not take the trouble to study this subject properly -

[34] We do not use the word 'supranational' because it has a hierarchical connotation. In a federal form of government, a Federal body looks after the interests of the whole and Member States look after the interests that they themselves can look after. There is no hierarchy because the Federal body, at the request of the Member States and vested with some powers of those member states, provides a concern that the Member States themselves cannot realise. The assumption that in a federation the Federal body can hierarchically compel Member States with powers is one of the fallacies discussed in Chapter 5. So, a federal state is not a supranational state in the sense of having top-down hierarchical powers.

without loss of sovereignty of the member states. This is one of the misconceptions that will be discussed in Chapter 5.

The constantly asserted loss of sovereignty of Member States as a result of federal state formation makes politicians and citizens react negatively to proposals for the federalisation of Europe. Only when you make it clear that the International Olympic Committee, of which the federal FIFA is a member, is the largest private federation in the world does a light come on. No grassroots sports club anywhere in the world, which is united via the federal national sports federations into continental federal sports federations which together form the federal IOC, will experience that membership as a loss of local sovereignty. On the contrary, that gigantic private federation offers individual members of even the smallest sports club the chance to win a gold medal. Without the federal IOC, they cannot achieve this on their own.

In his Ventotene Manifesto, Altiero Spinelli refers to nation-state anarchy as follows:

> "The absolute sovereignty of national States has led to the desire of each of them to dominate, since each feel threatened by the strength of the others and considers that its 'living space' should include increasingly vast territories that give it the right to free movement and provide self-sustenance without needing to rely on others. This desire to dominate cannot be placated except by the hegemony of the strongest State over all the others. As a consequence of this, from being the guardian of citizens' freedom, the State has been turned into a master of vassals bound into servitude."

2.6 The war dynamics of the European and global state system

On the basis of this scientific framework, Piepers makes a detailed analysis of events and circumstances that led to a state of equilibrium in Europe between 1480 and 1945 - through four accelerating war cycles - and at the same time laid the foundation for a global system of states, the United Nations. A phase transition from a system without structure and cohesion before 1480 to a post-1945 European state system with structure and cohesion. This phase transition took place in four stages, each with its own war cycle that gradually worked its way up to such a critical situation that a systemic war became inevitable. After which the next war cycle began to form. The last of the four produced the Second World War, which in turn produced the European and global system of states, slowly but surely developing into such entropic disorder[35] that the next, the fifth, system crisis is about to break out. According to Piepers, this will take place between 2020 and 2022. On the understanding that the way in which this system crisis reveals itself is

[35] Although entropy is a concept from the laws of nature, in this essay it is used as a development that also occurs in tensions between people and conflicts between states.

not predictable, other than the expectation that it will not be accompanied by classic acts of war.

Piepers sketches how each of the four war/crisis cycles, although shorter in duration, was structured in the same way: a relatively stable period was always followed by a short critical period of the state system, after which that state system started a system war. Each war cycle had periods of relative stability with few wars. Their role as non-system wars/crises, moreover, was to preserve the status quo of the existing balance and to prevent or restore a disturbance of that balance. And thus, to achieve peace for some time. A balance, an equilibrium.

Systemic wars/crises are totally different. Their function is to create an entirely new international order and thus a new system of states with a longer period of relative stability. A system war/crisis is more than just a war. It denotes a crisis of the system that produces a state regrouping through war activities, alliance building and negotiations.

The four war/crisis cycles between 1480 and 1945 each consisted of series of disturbances of the existing order, after which that disorder (entropy) was always settled with non-system wars (the mechanism of negative feedback within the dissipative structure) to finally get so far out of balance that only a system war/crisis ('meta'-negative feedback) could bring about a new state of equilibrium.

The last of the four system crises (WWII) created a new global state system in 1945 and a new European state system in 1950-1951. But at the same time, it started a second structure of chaos (entropy). It is preceded by a new, thus fifth, cycle of war/crisis - in which the global system of states began to play a major role for the first time. Think of the Cold War, the fall of the Berlin Wall in 1989, the Balkan War, conflicts in the Middle East and in Africa, geopolitical tensions and trade wars, conflicts in areas such as refugees, immigration, climate, terrorist attacks and rebellious population groups, hostile reactions of citizens to the handling of the corona pandemic.

Thus, even after 1945, the non-systemic wars/crises continued, and a balance was always restored somewhere for a short time. But in the meantime, state entropy within the European and global state system is building up. A new war cycle - similar in configuration to the four previous ones - is forming. After a brief period of relative stability, 75 years, a new systemic crisis awaits us, whether or not accompanied by the scenes of war, resulting in a new balance, a new ordering of state systems.

2.7 The four cycles of wars/crises

Now first a sketch of the way Piepers describes four system wars, each with a new version of the state system, for the period 1480-1945. In that period of 465 years, wars, the formation of the concept of state and the advent of a European system of states were closely connected.

As the first system war, he mentions the Thirty Years' War of 1618-1648, by the way ignoring the Eighty Years' War of 1568-1648 between the Netherlands and Spain. Both wars were ended by the Peace of Münster and the Treaty of Osnabrück, after which in 1648 the Peace of Westphalia brought about the system transition with the formalization of sovereign nation states. The French revolutionary and Napoleonic wars of 1792-1815 constituted the second system war. This was followed by a new order of the European system of states, partly on the basis of the laws and measures taken by Napoleon. The First World War from 1914 to 1918 created the new confederal order of the League of Nations as the third system war. And World War II created the fourth system war - via the Atlantic Pact of President Roosevelt and Prime Minister Churchill in 1941 - the global intergovernmental state system of the United Nations in 1945. Plus, an upgrade of the European state system in the form of a system of intergovernmental governance. Upgrade in the sense of a political renewal unprecedented in Europe.

Between these four system wars there are four war cycles of non-system wars. These are wars which, in the meantime, bring about a new balance, a new equilibrium, but do not lead to a new order. These cycles became shorter and shorter: 1480-1648, 1648-1815, 1815-1918, 1918-1945. Respectively 168, 167, 103 and 27 years. Now, from 1945 to the present, we are experiencing one of 75 years. We have gained this through the relative stability of the European and global system of states, which has been able to cushion conflicts with more instruments than just non-systemic warfare and armed UN interventions - for example, increasingly intergovernmental systems of governance based on treaties, conventions, and agreements. Time and again, restoring peace and quiet. But we will end up paying the price of a new systemic war, because treaties, agreements and arrangements between states contain serious systemic flaws that lead to increasing tensions and conflicts, eroding such systems, creating an identity crisis, and then imploding[36].

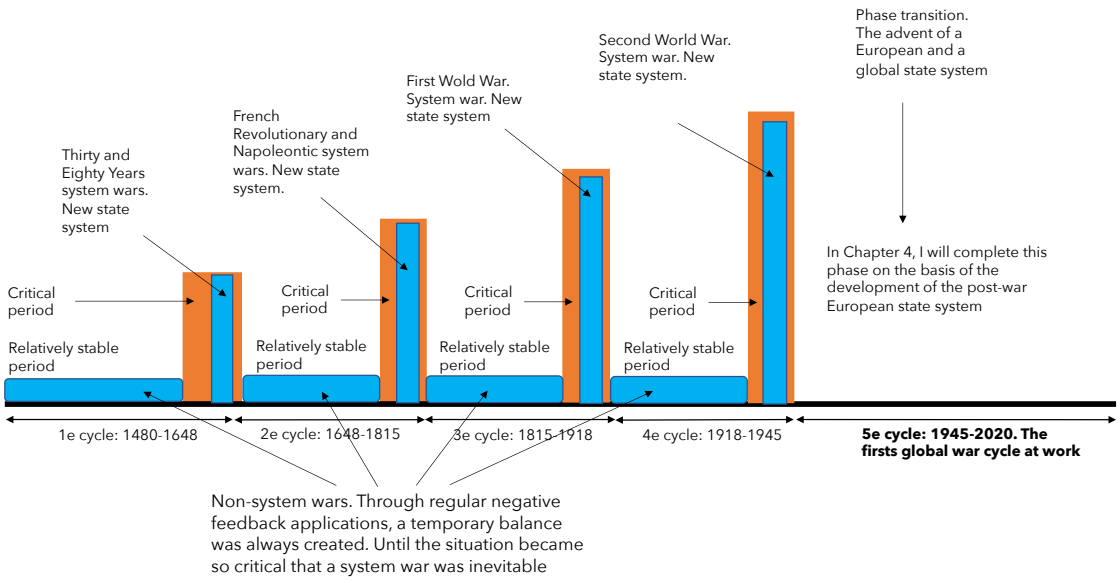
It is important to remember that a systemic war is essentially a systemic crisis. There is much more going on than just a war. All kinds of events, social processes

[36] See Leo Klinkers' article, 'The perverse impact of operating with treaties. EU politicians don't know the difference between an undemocratic intergovernmental treaty and a democratic federal constitution. The lack of knowledge is amoral, the result is immoral', in: Europe Today Magazine 16 juli 2020.

and developments, unrest, unease and ever more means to reinforce that unrest and unease into violence, rage right through the existing systems of states. For the current European state system, this includes observable attempts at autocratization with its social oppression and weakening of institutions, new technologies with their potential for abuse, changing constitutional frameworks with serious defects, blurring of cultural identities, populist nationalism with its self-centered and hateful features, terrorism, tensions between the world of Christians and that of Islam, more and more angry people turning away from governments, whether or not due to the negative effects of neoliberalism, disrupting the interaction of negative feedback mechanisms that are supposed to provide some peace, order, balance. All indications of a critical state of the European and global system of states and, as a new cycle of war, the impetus for a new system war/crisis, in which all the major powers will play their own game in a quest for a new order.

2.8 The first phase transition: 1480-1945

With a drawing, Piepers sketches the phase transition after four war cycles with four system wars each. Below is an adaptation of that drawing, a slightly different design. We add elements including a fifth cycle, the one from 1945 to the present. That is the first global war cycle after the phase transition to a global and European system of states. Because war cycles repeat themselves - they have the same patterns - a new systemic crisis will produce a different system of states. Given the evolutionary nature of new state systems after a major systemic crisis, this can only be systems of global and European federal state formation.



2.9 Growth, pace, and end of dynamic systems

State systems are living, dynamic systems. They contain networks with properties of universal laws in areas such as growth, innovation, sustainability, and pace of the life cycle. Including the end of life cycles. It works just as with other systems, for example with people with their networks of blood vessels: one clot of blood in a vein and the life of that system is gone. Or cities with branching road systems: structural congestion affects the quality of urban life. Also, political, socio-economic, and cultural activities with branching structures, like the internet, grow and supply energy until they stop. Only professional maintenance and timely renewal can postpone the end of a living system for some time. The over-70s among us understand this well.

Thinking in terms of those universal laws of growth, innovation, sustainability, and pace of the life cycle exposes fundamental principles that determine the behaviour of systems. This is the striving of networks to optimize their network structure, so that they can do what they exist for, which is to fulfil a distribution function of energy. Just as branches and roots create the system 'tree' by distributing energy. And let it exist until the energy runs out. That survival and yet running out of energy is determined by evolution. It is a question of selection.

In state systems, the same principles of distribution of energy apply, such as knowledge, power, influence, military capacity, economic growth, geopolitical political relations, support of societies. Their optimization depends on the structure of that living system. That is, the quantity and durability of the energy supplied by the networks of the state system are determined by the quality of that system. Quality is then also determined by mass.

Optimization of the system - partly determined by the amount of mass - is thus subject to natural laws governing the network mechanisms. These operate on different scales: sublinear, linear or supralinear. Depending on the level, such a network shows a certain behaviour and growth: either less than exponential growth, or exponential growth or super exponential growth. Networks on a sublinear scale show finite growth. Networks of a supralinear nature have infinite growth possibilities, provided that sufficient energy sources are available. Piepers (p. 116): "The finite growth of sublinear networks is a consequence of the increase in efficiency; for at a given moment there is no more energy available for growth and only for maintenance of the network in question." Hold that statement for a moment.

These insights are fully applicable to the development of the European and global state system as a growth process. Between 1480 and 1945, the population of the European Union, including the United Kingdom, grew from over 80 to over 500

million, while the number of state-like territories before 1648, and real states after 1648, gradually decreased to 27 in the European Union. The reduction in numbers led to an increase in the size of the remaining states. This decrease in numbers and, consequently, the individual growth in size per state, is based on energy and other resources. Those energy and resources are partly needed to maintain those states, partly for growth. Every living system, however, after reaching a maximum size, has a finite growth. And this is caused by the sublinear scale of physical distribution networks. In mammals, these are the branching networks of blood vessels that carry and distribute blood and oxygen to the cells in the organism. As such a network grows, an economy of scale occurs, but this causes the available energy to be used only for maintaining the system, including repairing defects, and no longer for growth. Again, the older ones among us understand exactly what this says. Thus, because of the sublinear scale of physical distribution networks and the economies of scale that this produces, growth is finite.

This fact can be projected onto one of the most difficult issues within the European Union: can the Union accept more Member States (= growth of the system) with the same intergovernmental networks that must ensure the supply of energy to keep the system alive? The answer is: no, it cannot. That energy is no longer there. With its 27 Member States, the system is already falling apart. To add more Member States, however dear they may be, will only accelerate the collapse of the European Union. The networks of the intergovernmental operating system that were supposed to ensure growth and its continued maintenance are exhausted.

Only a fundamental intervention in the intergovernmental network will enable the Union to grow to the size of – let's say - 50 Member States, just like the United States. And - you guessed it - this can only be done by exchanging the intergovernmental European state system for a federal state. Only the networks within that specific federal constitutional and institutional organisation structure provide the supranational energy to guarantee such growth. Until sooner or later, the supply of energy and resources within that federal system will fail as well. Then growth can no longer be supported and stagnates. At that moment growth and renewal stop and there is insufficient energy supply for the necessary maintenance and renewal of the federal system. After which a meta-negative feedback will have to provide a new, higher order.

We saw this happen in the United States, in the form of an asymmetrical political 'war'. Trump, supported by the Republican party and an ultra-right-wing constituency, fought against President-elect Biden, supported by the Democrats. Trump's followers operated with 'weapons' not driven by facts and values, such as lies, bullying, violation of the constitution and denial of the rule of law. Biden's followers handled 'weapons' like facts and values, such as the constitutional checks

and balances to maintain the trias politica, respect for the rule of law, respect for experts and concern for social values like Medicare for all and Black Lives Matter. In a quest for autocratic power, Trump tried to dismantle the constitutional and institutional anchors of the federation through divide and rule. He undermined the networks that feed the federation's energy by attacking the trias politica with its ironclad checks and balances, by nepotism, by evading the rule of law, by attacking the sovereignty of member states, by manipulating the financial and economic system including the fiscal transfer union, by ridiculing the superpower status, preventing the US from making geopolitical corrections and by weakening popular support for political and social renewal. He sacrificed America - exhausted it - in favour of his personal interest: to become an autocrat.

The internal and international networks with which America constantly feeds, sustains, and renews itself have lost part of their energy-giving power and have eroded into energy-guzzling divisive entities. But the entropic disorder organised by Trump - especially through his culpable neglect of policies against the corona pandemic - simultaneously stimulated the organisation of the drive to restore that order[37].

This became clear during the elections of 3 November 2020. The systemic conflicts linked to this erosion will, however, lead to a new equilibrium with some corrective negative feedback, unless some forces and powers still manage to unleash a civil war. But even then, there will be a correction, although of a larger, meta-order. In any case, the genetic vitality of the American federal state system guarantees a revival and renewal of federal rules, structures, and processes. Not only of the relationship between the white and coloured populations after every attempt at equal rights has failed so far[38].

Hopefully, this will include the abolition of the seriously outdated and undemocratic district-based electoral system, corrupted by Gerrymandering[39] and

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[37] For lessons we can learn from Trump's behaviour, see the article 'The Trump Case: seven lessons it taught us and a final question for Europe.', by Mauro Casarotto in Europe Today Magazine of 20 Januari 2021: https://www.europe-today.eu/2021/01/20/the-trump-case-seven-lessons-it-taught-us-and-a-final-question-for-europe/.

[38] After the Civil War from 1861 to 1865, four Reconstruction Acts in 1867 decreed equality for the black population. Ten years later, they were repealed. The so-called Jim Crow laws after 1880 prescribed racial segregation. Martin Luther King led a new struggle for equal civil rights in the second half of the 20th century, with only partial success. In 2020, this is revived. If the US succeed in finally ending segregation completely - and if it succeeds in renewing the outdated electoral system on a proportional basis - those networks will add an unprecedented new energy to the renewal of the federal state system in the US. As for the latter, Chapter 9 offers perspectives.

[39] Gerrymandering is the right within the member states of the American Federation to have the boundaries of districts within the state revised periodically. The goal: to revise the boundaries of electoral districts due to demographic shifts within a state in such a way that in elections - based on

SuperPacs[40], in favour of the introduction (after more than thirty unsuccessful attempts in the last two centuries) of a popular vote-based system with transnational elections. The district-based electoral system leads - as in the United Kingdom - to a two-party system that creates unimaginable entropic disorder through political monopoly[41]. Also, and especially in terms of democracy. The principle of 'winner takes all' leads, in the event of a 51% to 49% vote, to the non-representation of those 49%. It is not called a 'spoil system' in public administration for nothing.

This example from the United States shows that chaos within a system can be caused by that system itself, not by accidental factors outside that system. And so, can chaos grow within the European Union. But the law of growth of entropic disorder leads sooner or later to re-order through meta-negative feedback.

2.10 A closer look at the growth of Europe

In the period 1480 to 1945, a European state system developed as a result of numerous negative feedback mechanisms within a dissipative structure. With four war cycles, leading to four system wars when regular negative feedback could no longer provide a temporary balance. In other words, when the increasing tensions resulting from ever-escalating rivalries within the developing state system could no longer be mitigated by non-systemic wars, only a system war could create a new order and thus a new, temporary equilibrium.

Tensions in social systems are comparable to entropy in physical systems. They contribute to disorder and uncertainty. The fact that tensions can be interpreted as threats but also as opportunities increases disorder and uncertainty. And that in itself is a reason, a cause, a source for politicians to strive for a new order; obviously the order they desire. The wars waged for that purpose have a regulatory function and thus contribute to the reorganization of the system of states.

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the adage the winner takes all - it works to the advantage of the party that wants to revise the boundaries. The term gerrymandering is derived from the name of the governor of Massachusetts - Elbridge Gerry - who introduced this by law in 1812. On the map, this produced the image of a salamander. Hence the contraction of 'gerry' and 'mandering'. It is widely seen as one of the corrupting aspects of the American electoral system and therefore regularly challenged in court.

[40] PAC (also called SuperPac) is the abbreviation of Political Action Committee. These collect donations, often many tens of millions, which are then given to the campaign organs during the election campaign. Although this is bound by strict rules, it has the connotation of 'buying the elections' by persons and organisations with an interest in a certain election result.

[41] Every monopoly corrupts in the sense of the Latin word 'corrumpere'. That is, to corrupt. Political monopolies in the sense of long-term rule by one political force is one of the most serious diseases that can afflict a society.

Because Europe itself is an open system - in constant interaction with the rest of the world - colonization gained momentum from the 15th and 16th centuries onwards. Colonization had a dual function for Europe's growth: it provided the colonies with the energy to fuel its own expansion and, in so doing, it dumped the tensions of its own European state system in those colonies. And they further resolved tensions by means of trade wars and piracy between states; negative feedback to constantly balance the states that wanted to conquer a share of the colonial spoils. The effect over the centuries was an increasingly clear process of integrated European state building. Towards a state of equilibrium. The colonial expansion of Europe and the slowly integrating character of the European state system were essentially communicating vessels: the economic, political, and military loss of the one became the success of the other. Until, in 1939, growing rivalries ignited in the Second World War, after which a new balance was achieved with the composition of the global and European state structure.

2.11 Regulation and balance

Societies are open, living systems. They get out of balance through the dissipative interaction with the environment. But balance (homeostasis) can be restored by regulation in the sense of corrective negative feedback. This is the regulation of entropy, of disorder, as a result of political, social, economic, and cultural tensions.

The question is always: how much regulation do you apply? A lot or a little? Can you restore the balance with minimal regulation or is more needed? The answer to this question is implicit in another: how efficient are the people who are regulating in a corrective way? That efficiency depends on the degree of order within states and between states. In both situations, the degree of corrective regulation required is different. Where there is relative order within a state, minimal regulation is the obvious choice: 'don't shoot a gun at a mosquito'. Where there is entropic disorder between states, the power of a paradigm shift is needed.

Democracy is a good instrument for minimal regulation; for restoring a dynamic balance in a society within a state. ‘Good' in the sense of creating balance without state coercion from above. However, the extent to which democracy is efficient as a minimum regulation depends on the quality of that democracy. And that is the big problem with the European Union. Within the individual 27 Member States of the EU, constitutional and institutional aspects of democratic governmental authority apply. In some more and better than in others. But between those Member States, the construction of democracy based on the Lisbon Treaty is an astonishing mess. It is a hotchpotch of all the errors in the great book of misguided constitutional rules and institutional networks that should energize a system of states that exudes calm, order, authority, and influence. Nothing could be further

from the truth. There is no homeostasis within the European system of states, and entropic disorder is spreading year after year. This will now be explained.

2.12 The critical period after the Second World War from 1945 to 1950

We distinguish between four distinctly different periods: 1945 to 1950, 1951 to 2001, 2001 to 2009 and 2009 to 2020. This is - to use a term of Karl Marx - the path of the 'Verelendung' (total decay) of the post-war European state system: from 1946 onwards, it accumulated a large amount of energy and gradually reached the point where the available energy could only be used for temporary maintenance repairs of the system and thus no longer for renewal. Then - by using more energy than it can store - it is now in an identity crisis, waiting for the 'Verelendung' ending in the 'Kladderadatch' in the sense of a system implosion.

Piepers makes it clear that there is a 'critical period' in the run-up to a systemic crisis, but also immediately afterwards. Beforehand, the entropic disorder is so great that normal corrective negative feedback no longer works. The state system is in such disarray that only a systemic crisis can create a new order. This critical period extends beyond the crisis. In the drawing shown earlier, this was indicated by showing a strip of red of the critical period after the blue-coloured war.

Piepers describes in detail the critical part before 1939, but not after 1945. He suffices with remarks that indicate little faith in the strength and cohesion of the European state system after 1945. And that the period after 1945 is the prelude to a new war/crisis cycle. But he does not give any details. Piepers' failure to fill in the specific aspects of the critical period after 1945 is the 'gap' referred to earlier in 2.4. This will now be closed.

2.13 The source of the post-war critical period was already in the Second World War

Opponents of the Italian autocrat Benito Mussolini were exiled to the island of Ventotene in the Tyrrhenian Sea just off Naples. One of the exiles who became famous after the World War was Altiero Spinelli. With Ernesto Rossi, who wrote part of the Third Chapter, Spinelli published the 'Ventotene Manifesto' in 1941. An adapted version from 1944 is considered the standard. The title of the Manifesto reads: 'For a Free and United Europe'.

Spinelli wrote this Manifesto in line with the ideas of the authors of the American Federalist Papers (1787-1788): James Madison, Alexander Hamilton, and John Jay (see Chapter 4). With eighty-five Papers, they explained - via the newspapers - to the people why and how the Philadelphia Convention (1787) could come to the

design of a federal state[42]. The Ventotene Manifesto therefore builds on the essence of federal statehood as composed by that Philadelphia Convention of only fifty-five people. Spinelli saw a European federation on the model of America's as the only form of state that could lead to peace, prosperity, and security among the states of Europe after the end of the war.

A quote from the Ventotene Manifesto:

"The question which must be resolved first, failing which progress is no more than mere appearance, is the definitive abolition of the division of Europe into national, sovereign States. The collapse of the majority of the States on the continent under the German steam-roller has already given the people of Europe a common destiny: either they will all submit to Hitler's dominion, or, after his fall, they will all enter a revolutionary crisis and will not find themselves separated by, and entrenched in, solid State structures. Feelings today are already far more disposed than they were in the past to accept a federal reorganization of Europe."

The inability or unwillingness of people to contemplate the horrors of nation-state anarchy represent in Spinelli's eyes "a serious obstacle to the rational organisation of the United States of Europe, which can only be based on the republican constitution of federated countries."

Note: one of the essential features of federal statehood is the securing of democratic relations through the adoption of a federal constitution: no federal constitution, then no federation either. But no democracy either. Without a constitution, administrators are not politically accountable to a parliament. This absence of a Constitution is a source of autocratization and despotism[43]. And that was the great fear of the Philadelphia Convention. They saw in a federal constitution of only seven articles the only means to keep out a new autocrat (they had renounced the autocratic King of Great Britain in 1776) forever. Think of the phrase 'no federal constitution, then no federal state' as: 'no apples, then no apple pie'.

Regarding autocratization, we can learn from the following words of Machiavelli, in Chapter IX:

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[42] The Philadelphia Convention designed the federal constitution on the basis of the ideas of European philosophers such as Aristotle (popular sovereignty), Montesquieu (trias politica), Rousseau and Locke (social contract and popular sovereignty).

[43] See Mike Abramowitz & Nate Schenkkan, 'The long arm of the authoritarian state' in: The Washington Post, 3 February 2021. This article is a frightening expose of the increasing number of opponents of one's own nationality being murdered by despotic regimes abroad.

“The absolute power of a man is created by the people or by the dignitaries, whichever one of the two groups has the opportunity to do so. For when the dignitaries see that they are no longer able to stand against the people, they soon put forward one of them to whom they grant supreme power so that, protected by him, they can indulge their lusts. And when the people see that they are no longer able to stand up to the dignitaries, they likewise put forward someone to whom they grant the highest power in order to find protection in his authority. A person who comes to power with the help of the dignitaries has more difficulty in holding his ground than a person who comes to supreme power with the support of the people. For when the former is in power, it appears that he is surrounded by many others who seem to be equal to him and therefore he cannot command them and bend them to his will just like that. But he who comes to power thanks to the favour of the people, is a people person and has either no one or very few people around him who are not prepared to obey him. Moreover, one cannot in good conscience satisfy the dignitaries without offending others, something that is possible with the people. For the goal of the people is higher than that of the noblemen, for the latter want to oppress and the people just do not want to be oppressed. Moreover, he who has the greatest power can never protect himself against the people if they are hostile to him, because they are too numerous. He can do so against the dignitaries because there are only a few of them."

However, we are faced with a current - deeply embedded in the EU intergovernmental system - supported in part by some federal movements - that denies that a federal state requires a constitution. Or takes the view that the Lisbon Treaty can be amended so often that, in time, it will automatically become a federal constitution. The predicted systemic crisis will hopefully put an end to this conceptual error. Unless we, as the Federal Alliance of European Federalists, rather succeed - pointing to the entropic disorder partly caused by would-be federalists - in achieving unity by 'federating the federalists'.

Incidentally, this discussion applies in full to the United Nations. There, too, since its founding in 1945, there has been a movement - supported in part by world federalists - that sees systematic adaptation of the UN system of treaties as the way to achieve a federal world federation. However, with other world federalists, we think in the same way as a current of European federalists that only the complete abolition of the intergovernmental system - in favour of the introduction of a federal form of constitution-based government - can be the solution.

Anyone who takes the trouble to study the workings of the Philadelphia Convention 1787 - and the Federalist Papers of Madison, Hamilton and Jay devoted to it - will be surprised to find that already in 1787-1788, they spoke of the pernicious systemic flaws of a treaty as an instrument to ensure the cohesion and unity of states. This was their treaty under the name of the 'Articles of

Confederation'. Its purpose - after the Declaration of Independence of 1776 - was to keep the thirteen freed colonies together as a Confederation of independent states. This did not succeed. Rivalry, quarrels, and even the threat from armed conflicts between a Northern, a Southern and a Central group of those thirteen states arose. The Philadelphia Convention put an end to the Confederate Convention within a few weeks, did not consider carrying out their task - prescribed by law - of amending the Convention, but threw it in the wastepaper basket and, within a few months, drafted the world's first federal constitution. It consisted of only seven articles. An extraordinary piece of constitutional law. Madison and Hamilton made clear in a number of papers why and how a treaty with its inevitable systemic flaws - and with it its nation-state anarchy - destroyed the cooperation and cohesion between those states (see Chapter 4). For this reason, Spinelli declared himself in the Ventotene Manifesto to be an uncompromising advocate of a federal constitution for the post-war construction

of a federal Europe along the lines of thinking of the authors of the Federalist Papers and the founding fathers of the Philadelphia Convention. This line of thinking is based on the system of federalism according to the Political Method of Johannes Althusius of 1603[44]. It would be going too far to go into the essence of that approach here[45].

The power of Spinelli's Ventotene Manifesto proved good for the organisation of numerous meetings between 1945 and 1950, aimed at the federalisation of Europe. Unfortunately, these all took the course of positive feedback, thus exponentially deviating from the line of federal state formation outlined by Spinelli. The five most important ones[46] will be discussed, noting that the fifth one went completely wrong. Instead of corrective negative feedback, the process of deviating from standards[47] of federal statehood was fundamentally reinforced. It is

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[44] The full title of his method of federal state building is: 'Politica methodice digesta, atque exemplis sacris et profanis illustrata'. For expert explanation of the Political Method of Althusius see Thomas Hueglin, Early Modern Concepts for a Late Modern World: Althusius on community and federalism, Wilfrid Laurier University Press, 1999.

[45] A report by the Federalism for Peace Foundation 'From Cold Case to Hot Case', dealing with the failed federation of the United States of Indonesia 1949-1950, which led to the occupation and oppression of the Moluccan people, submitted to the Human Rights Council in Geneva on 12 April 2020, contains a Chapter that captures the essence of Althusius' method. The link to the report is http://www.federalismforpeace.org/wp-content/uploads/2020/04/RapMolEng12april20_def.pdf.

[46] For more information, see the European Federalist Papers written by Leo Klinkers together with Herbert Tombeur between August 2012 and May 2013. See https://www.faef.eu/the-european-federalist-papers/.

[47] In Leo Klinkers' book 'Sovereignty, Security and Solidarity' (Lothian Foundation Press 2019) you will find the standards of elementary federalism. An abridged version of this can be found in an article in Europe Today Magazine of September 7, 2019: https://www.europe-today.eu/2019/09/07/standards-of-federalism/.

this error that makes the European system of states an increasingly weak affair that is organising its own downfall. Now those five meetings between 1945 and 1950.

2.14 Hertenstein 1946

Between 15 and 22 September 1946, the Swiss federal movement Europa Union Schweiz organised a meeting in Hertenstein (near Lucerne) that resulted in a twelve-point programme. This programme can be seen as an elaboration of the federal ideas of Spinelli's Ventotene Manifesto. Here are the twelve points of the Hertenstein Programme of 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.
5. The European Union shall be open to all peoples that consider themselves European and conform to its fundamental rules.
6. The European Union shall define the rights and duties of its citizens in a declaration of European civil rights.
7. This declaration shall be based on respect for the individual and his responsibility towards the various communities to which he belongs.
8. The European Union shall be responsible for orderly reconstruction and for economic, social, and cultural collaboration; it shall ensure that technical progress is devoted solely to the service of mankind.
9. The European Union is directed against no-one and renounces any form of power politics. It refuses to be an instrument in the service of any foreign power.
10. Within the framework of the European Union, regional unions based on agreements freely arrived at are not only permissible but desirable.
11. Only the European Union can ensure to all its peoples, small and great, their territorial integrity and the preservation of their own character.
12. By showing that it can solve the problems of its destiny in a federalist spirit, Europe will make its contribution to reconstruction and to the creation of a world community of peoples.

Points 1 and 3 make it clear that the authors do not seek an isolated federal Europe but see the federalisation of Europe as an aspect of a global federal state. However, they make two mistakes, one of which is the main systemic error that has characterized the EU's disorderly weakness until today. To see a federal Europe as

an essential contribution to the intergovernmental United Nations is to mix oil with water. That will not work. The UN, only founded in 1945, has nothing to do with federal statehood. It is an intergovernmental body with serious democratic, constitutional, and institutional shortcomings. This incorrect combination - linking the envisaged federal European organisation with an intergovernmental global organisation - is the source of the error that will soon be apparent at the fifth meeting. If the drafters of the Hertenstein Programme had studied Spinelli's Ventotene Manifesto properly, as well as the essence of federal organisation according to the political method of Althusius, the Philadelphia Convention, and the Federalist Papers of Madison, Hamilton, and Jay, they would have had to reject the treaty-based intergovernmental UN in this Programme, unless it were to be transformed into a global federation.

The second error is in point 4. Federal organisation does not involve the transfer of parts of the national sovereignty of Member States, in the sense of losing that sovereignty. This persistent misconception will be discussed in Chapter 5. Member states of a federation retain their full sovereignty but know that they cannot (any longer) look after certain interests on their own. They entrust the care of these common interests to a federal body. Simply put, member states of a federation say:

"To you, federal body, we entrust some of our powers to look after interests that we cannot look after ourselves (anymore). These are common interests; interests of the whole. We, the Member States, are thus rendering dormant some of our powers to look after an exhaustive range of subjects. But remember, our powers are inalienable. If you mishandle them, we will wake them up again and will again take care of those interests ourselves."

The scientific formula of federal organisation is: 'vertical separation of powers leading to shared sovereignty'. Chapter 5 contains examples and drawings to clarify this.

WWII had only just ended when Hertenstein began to deviate from the standards of federal state formation. This is a systemic error in the sense of a systemic break in the knowledge of federal state formation as built up by Althusius, the Philadelphia Convention, the authors of the Federalist Papers and shared again with the European community via Spinelli. The possession and retention of knowledge is the main source of energy to establish, maintain and renew a system. Until one can reach a higher level with better knowledge. That is the scientific process of increasing knowledge by falsifying outdated knowledge. However well-intentioned, the Hertenstein confusion of federalism with intergovernmentalism is not a level of new, higher knowledge, but one of a lower level.

The events from Hertenstein 1946 onwards can be seen as the beginning of weakening networks of the European system of states, the energy of which has been depleted in the period from 1945 to 2020 to such an extent that it no longer functions as a supply of energy for the maintenance of the current system of states. Let alone for its growth and renewal. Britain did join the European Economic Community in 1973, but with such reservations (e.g., Thatcher's cry of 'I want my money back') that the energy in favour of the Union was already fading. Brexit is partly due to one of the systemic flaws of the Lisbon Treaty: the European Council is allowed to force any decision it sees as serving the goals of the Union top-down down the 'throats of the member states'[48]. This eventually became too much for the British.

2.15 Winston Churchill in Zurich 1946

On 19 September 1946, Winston Churchill gave a fiery speech at the University of Zurich, using the metaphor of the tragedy of the Second World War as the rubble from which a federal Europe could rise like Phoenix. He advocated the creation of the United States of Europe on the Swiss model. For his argumentation, see the relevant video which can be found on the Internet[49]. Now, only one remarkable detail will be discussed, which will be elaborated on in Chapter 4.

Some years earlier, in June 1940, German troops were in front of Paris, ready to take the city. On 16 June 1940 Churchill - assisted by the general and later French President Charles de Gaulle, who had fled to England - had a telephone conversation with the French Prime Minister Paul Reynaud, who had left the meeting of the French War Cabinet and gone to another room before picking up the phone[50]. Churchill offered Reynaud an 'indissoluble union'. A federal union of England and France on the condition that France would not capitulate.

The offer of an indissoluble union - so even before Spinelli's Ventotene Manifesto was written. Not least as the first element of a European and perhaps even World Federation. A union with common bodies in the fields of defence, foreign policy, financial and economic policy, common citizenship, and a single war cabinet. These are basic elements of a federal body's remit. But Churchill came too late

[48] See Article 352 of the Treaty on the Functioning of the European Union, one of the partial treaties of the Treaty of Lisbon, adopted in Rome on 25 March 1957.
[49] https://www.youtube.com/watch?v=giilcPJsYuw.
[50] See Andrea Bosco, 'June 1940. Great Britain and the First Attempt to Build a European Union' (p.2), Cambridge Scholars Publishing 2016.

with his offer. When Reynaud returned to the meeting, it turned out that Marshal Pétain had already convinced the War Cabinet of the need to capitulate.

Let us look at this in more detail. Britain's highest representatives, despite the great uncertainties of the war, offered a union of the character of a federal state. A union of France and England but as a prelude to a European and world federation. That is no small thing. How does this compare with Churchill's fiery speech in Zurich on 19 September 1946? Then, six years later, Churchill made it clear that a federation of the countries of the European continent was urgently needed, but without Great Britain. In his view, the Commonwealth, Britain's confederation with its former colonies, was sufficient.

What has become of this in the year 2020? With Brexit, the United Kingdom left the European Union. One by one, the countries of the Commonwealth are leaving the confederal Commonwealth by no longer accepting the British Queen as Head of State. What remains for England is the rock of Gibraltar, a few islands here and there and permanent membership of the Security Council. The 'British Empire' and 'Global England' no longer exist.

Meanwhile, it appears that Scotland has no qualms about seceding from the United Kingdom. All indications are that in the Scottish elections in May 2021, the Scottish National Party will win the majority (again) and will then - despite the objections of Prime Minister Boris Johnson - hold a referendum with independence as its stake.

If independence is chosen - a democratic right to self-determination - questions arise such as: will Scotland then continue as an independent state alongside the rest (England, Wales and Northern Ireland, together about the same size as Italy), or will it form a federation[51] with the other three parts of the United Kingdom so that the word 'United' still has some meaning, or will it join the European Union as a member state, or sign up as a member state of the United States of Europe, which is to be founded? [52]

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[51] As parts of the United Kingdom, Scotland, Wales, and Northern Ireland - with their own parliament and government - have a form of autonomy under the term 'devolution'. It is only a small step to stretch this devolution to a federal state. Proposals to carry out this federalisation in the own country appear regularly in the British press. It is a theme that the new Labour leader, Keith Starmer, also raises from time to time. See his article in The Guardian of 26 January 2020 'Only a federal UK can repair shattered trust in politics': https://www.theguardian.com/politics/2020/jan/26/rebecca-long-bailey-calls-for-greater-powers-for-scotland-and-wales?CMP=Share_iOSApp_Other. Another interesting article is from Andrew Blick: Federalism for the United Kingdom: an answer that raises questions, in: Federal Trust 3 March 2021.

[52] Kirsty Hughes, Director Scottish Center on European Relations, discusses the panic she sees on the Conservative side around the Prime Minister in the article "England's Scotland Panic-What is to

Back to Hertenstein. What happened there was a systemic breakdown in the sense of knowledge fading or knowledge clouding. Churchill's position in Zurich is a political retreat from the mindset of a federal Europe including Britain. It is a systemic break in terms of political commitment to thinking and acting in terms of standards of federal statehood. This retreat consisted of three aspects:

- For about a century and a half, Britain had led a drive for a federal Europe, including Britain, on the model of the United States.
- His offer to Prime Minister Reynaud was co-written by Jean Monnet, a French businessman who worked as a liaison between Roosevelt and Churchill in organising arms deliveries to Britain while America was not yet in the war. Monnet knew the history of the US federal system and was partly responsible for the federal standards in Churchill's offer. More about Monnet will be dealt with in Chapter 4.
- In Zurich, however, Churchill no longer chose to devote energy to a federal Europe including Great Britain, but rather to devote energy to the Commonwealth, a confederal association with the colonies which was already weakening immediately after the war, as the colonies fought themselves free (only Malaysia became independent through negotiations) and the largest former colonies developed as federal states.

2.16 Congress of Montreux 1947

At Spinelli's instigation, the Union of European Federalists (UEF) was founded in Paris on 15 December 1946, followed by a youth organisation Young European Federalists (YEF/JEF). The UEF held a congress in Montreux between 27 and 31 August 1947. The fact that Spinelli's ideas had in the meantime taken root was demonstrated by the presence of delegations from no less than sixteen countries, with some forty federalist action groups. The congress adopted a resolution calling for the establishment of a federal European government. It proved to be the prelude to the organisation of the European Congress in 1948, which is discussed below.

Of importance for the sake of history is the fact that the UEF started as a French initiative in 1946 as the Union Européenne des Féderalists. This French name concealed federalists with a federalist approach in the sense of so-called integral federalism[53]. This is the original concept of federalism, concretely applied by the Philadelphia Convention with the drafting of a federal constitution, considerably

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be done?", Federal Trust 25 January 2021. And her article, The UK's European and Constitutional Challenges Collide, in: Federal Trust, 26 February 2021. For analytical articles on Brexit, see Brendan Donnelly, former MEP, Director of the Federal Trust.

[53] See Dimitri Mortelmans et al., 'Integral federalism as an administrative and social model', in: Vlaanderen Morgen 1994/5.

reinforced by the authors of the Federalist Papers and offered again by Spinelli in his plea for the creation of the United States of Europe.

In a Federal Union article entitled 'Only a federal European Union can effectively respond to the existential challenges that confront the world', Charles Pinder, former chairman of the English Federal Trust, placed Spinelli's insights in a geopolitical context as follows:

> "New existential challenges have, however, become more and more evident, in the fields of security, climate change and economic globalisation. British people feel as strongly as other Europeans the need to improve the world system in order to overcome them. But they lack a clear idea of what to do about it. They sense that American hegemony is not the answer but have scant conception of what, beyond protesting, can in fact be done. There are however two ways to avoid absolute hegemony of the United States, which in the not-so-long run would be as disastrous for the Americans as for the rest of us.
>
> One is to wait a decade or two in the expectation that China will become an equivalent superpower which, even if it happens, would be a dangerous delay in an explosive world and a dangerous combination in view of the profound differences of political culture and international experience between Americans and Chinese. The other is to convert the European Union into a power at least equivalent to the US in all respects save military capacity, while substantially developing the Union's military strength as well.

> Altiero Spinelli, in his speech to the founding congress of the UEF at Montreux in August 1947, observed that Marshall Aid was a remarkable manifestation of liberal America which gave Europeans the chance to unite. But he predicted that, if a United States of Europe was not established which could become an equal partner, the United States would become an imperial America. Slowly but surely his prediction has been fulfilled."

But other federalists present at this same Union Européenne des Féderalists, operating under the English name Union of European Federalists (UEF), paid no attention to the fundamental character of Spinelli's argument, borrowed from the American constitution, and began to discuss the federalisation of Europe in a model that ultimately became the intergovernmental operating system - based on a treaty - of the EU. A model that is fundamentally alien to elementary federalism. And which, to this day, is partly responsible for the fact that the Union of European Federalists (UEF), with quite a few thousand members - deeply embedded in the intergovernmental EU system - has not been able to realise a federal state of Europe in over seventy years. And it is not just the UEF that has not made any real

effort to establish a federal Europe based on a federal constitution. Nor has the Spinelli Group. This group of around 30 leading European politicians, like the UEF, advocates a repeated amendment of the Lisbon Treaty on the assumption that you can then make it a federal constitution; a new kind of alchemy. The banalities that this led to in the period from 2001 to 2009 will be dealt with in a moment.

The Spinelli Group and the Union of European Federalists (UEF) would do well to reread the following quotation from Spinelli's Ventotene Manifesto - their own birth certificate, after all.

> "With propaganda and action, seeking to establish in every possible way the agreement and links among the individual movements which are certainly in the process of being formed in the various countries, the foundation must be built now for a movement that knows how to mobilize all forces for the birth of the new organism which will be the grandest creation, and the newest, that has occurred in Europe for centuries; in order to constitute a steady federal State, that will have at its disposal a European armed service instead of national armies; that will break decisively economic autarkies, the backbone of totalitarian regimes; that will have sufficient means to see that its deliberations for the maintenance of common order are executed in the individual federal States, while each State will retain the autonomy it needs for a plastic articulation and development of political life according to the particular characteristics of the various people.
>
> If a sufficient number of men in the main European countries understand this, then victory will soon fall into their hands, since both circumstances and opinion will be favourable to their efforts. They will have before them parties and factions that have already been disqualified by the disastrous experience of the last twenty years. Since it will be the moment for new action, it will also be the moment for new men: the movement for a free and united Europe."

The abandonment of Spinelli's correct vision that a federal state can only exist on the basis of a federal constitution and the frenetic insistence by the Spinelli Group and the UEF that you can turn a treaty into a constitution if you tinker with it often enough, as a result of which not a millimeter of European federalism has been realised since 1946, is formulated by Sergio Pistone in 2008 as follows[54]:

> "The Union of European Federalists (UEF) was founded in Paris on December 15th, 1946 and held its first congress in Montreux from August 27th-30th1947. Since then, sixty years have passed and United States of Europe, the objective which the UEF was created to achieve and which shaped all of its activities, has not been accomplished, although the European integration process has made significant progress in such a direction."

[54] See Sergio Pistone, 'The Union of European Federalists. From the foundation to the decision on direct election of the European Parliament (1946-1974)'. Giuffré Editore 2008.

So, the dividing line that exists today between the UEF with an intergovernmental approach versus federal movements with a classic approach to federal state formation that has proved its worth[55] began already in Montreux. But because the EU system nurtures federalists with an intergovernmental approach, federalists with an elementary approach cannot influence a removal of the intergovernmental operating system in favour of the establishment of a federal system. This school war within circles of movements that aspire to a federal Europe is partly responsible for such a loss of energy that the European Union cannot innovate, nor does it have enough energy for maintenance, which is necessary to postpone the decline for a long time.

To address this problem, the Federal Alliance of European Federalists was founded to do justice to the first sentences of the Spinelli quotation just quoted:

> "With propaganda and action, seeking to establish in every possible way the agreement and links among the individual movements which are certainly in the process of being formed in the various countries, the foundation must be built now for a movement that knows how to mobilize all forces for the birth of the new organism which will be the grandest creation, and the newest, that has occurred in Europe for centuries;"

If a federation of federal movements and pro-European organisations[56] succeeds in increasing the degree[57] of organisation (creating mass), federalists can be ready,

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[55] To reiterate: the world now has twenty-seven federal states that together accommodate just over 42% of the world's population. Note: there are strong federations; they are set up in accordance with standards of elementary federalism. America's is considered a strong one. There are also weak federations; they have intergovernmental watering down of the federal wine but can still be called federations. Take Belgium, for example. There are also so-called failed federations. In their set-up, there were so many deviations from the standards - deliberately or not - that they collapsed after a while. In Europe, for example, this applied to Yugoslavia and Czechoslovakia. The latter was split into two separate states, the Czech Republic and Slovakia. Yugoslavia broke up into Serbia, Montenegro, Bosnia and Croatia, a nation-state division with its inevitable conflicts. Africa has the failed Mali Federation of Mali and Senegal. The federation in Cameroon has also disintegrated.

[56] There are many dozens of them. A few names: Più Europa, Union Europea de Mallorca, World Federalist Movement Netherlands, Volt, Diem25, Pulse of Europe, Stand Up for Europe, European Federalist Party, We are Europe, European Sardines Group, New Europeans, Federalist Connection, Our Country, Europe, Europe: what a passion, EUsolidarity Now, and many others. For the record: exactly as befits a federation, all member organisations of the FAEF remain sovereign, autonomous. No forced assimilation through mergers.

[57] See the article by Lorenzo Sparviero 'Open Letter on federal Europe for sardines and other European movements', in Europe Today Magazine of 19 februari 2020: https://www.europe-today.eu/2020/02/19/open-letter-on-federal-europe-for-sardines-and-other-european-movements/.

after the systemic crisis, to lead a new European state system on a federal basis with this Toolkit. A corrective meta-negative feedback, back to the basics of correct federalization.

Hertenstein was a systemic failure in terms of knowledge of standards of federalism; Zurich a systemic failure in terms of political commitment to federalism and Montreux a systemic failure in terms of the methodology of federal design. Of course, one is free to reject adherence to standard knowledge, standard political commitment, and standard methodology. But then one commits oneself to a well-founded scholarly refutation of both the Political Method of Althusius, the pioneering constitutional and institutional work of the Philadelphia Convention, the eighty-five Federalist Papers, the Ventotene Manifesto, the European Federalist Papers, and other writings containing standards of federal state formation, including this Toolkit.

Before dealing with the 1948 European Congress, it is necessary to return for a moment to a few words from the Pistone quotation, which read "... although the European integration process has made significant progress in such a direction. We are talking about 'European integration". Those words are wrong. Not that Pistone can be blamed for this. Everyone who was involved in building the European Union put it in the context of 'European integration'. And people still use those words. But why are these words wrong? In combination with Article 352 of the Treaty on the Functioning of the European Union, one of the sub-treaties of the Treaty of Lisbon, adopted in Rome on 25 March 1957, 'European integration' is a euphemism for 'European assimilation'; that is, to make Member States look alike. Article 352 of the Treaty allows the European Council to impose any issue that it deems to be in the interests of the Union on the Member States, top-down. In other words, it can do so in violation of the principle of subsidiarity, which stipulates that the Union must leave to the Member States what the Member States can do better themselves.

Article 352 is one of the many so-called collateral articles of the Treaty of Lisbon. That means an article that clashes with another article (in this case, the subsidiarity article), and thus typifies the nature of the Treaty of Lisbon. A legal anomaly. It is precisely that top-down assimilating character of the Lisbon Treaty that always led the UK to adopt a contrarian position in order to ultimately opt for a Brexit.

If:
(a) it would dawn on the intergovernmental European Union that by top-down assimilating measures you constantly and increasingly antagonize Member States, and

(b) if the present United Kingdom had statesmen of standing and knowledge of federal statehood, then, with the British history leading the federal way between 1800 and 1940[58], they would – or might - have chosen for the strategy to dissolve the EU in favour of a federal Europe.

That will not happen for some time. Present British politicians do not have the level of statesmanship, nor knowledge on (standards of) federalism. In February 2021, the organisation Truth Defence revealed a report[59], based on media analysis, that structural disinformation campaigns by the Tories, in the run-up to the 2019 election, were the deciding factor in opting for Brexit.

In a federation, zero assimilation takes place. Nothing is lost. The member organisations of a federation remain as they are: each with their own constitutional system, their own domain of decision-making and their own cultural identity. The federal affiliation actually provides something extra. Namely, the care for interests - by a federal body - that member states cannot look after on their own.

We therefore endorse the view of Vernon Bogdanor when he says[60]:

> "In fewer than 100 days, Brexit will have been completed. Britain will be outside the European Union customs union and the internal market. But Brexit poses questions for the EU as well as for Britain. It challenges what might be called the ideology of Europe. It is, after all, a serious matter for a democratic organisation when a major member state decides to leave."

Looking back to Angela Merkel's Bruges Lecture[61] in 2010 in which she pointed to the ever-present tension between 'Brussels' and the Member States, Bogdanor writes:

> "If that tension is disturbed, and supranational policies intrude upon national identities, there will be popular resistance."

Correctly formulated. It is the apparent inevitability of determined developments in a cycle of systemic crises, the fifth since 1480, that makes both sides lose. The resulting additional tensions increase Europe's entropic disorder until a systemic crisis brings about a new order.

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[58] Chapter 4 deals with the many attempts from England, from 1800 to 1940, to establish a federal Europe.

[59] GE: 2019: A postmortem on truth': https://www.truthdefence.org/disinformation.

[60] Brexit was no aberration. The European Union needs to learn from it, in: The Guardian, 25 October 2020.

[61] Speech by Federal Chancellor Angela Merkel at the opening ceremony of the 61st academic year of the College of Europe in Bruges on 2 November 2010.

By the way, Bogdanor is no federalist. Later, during the debate on the Maastricht Treaty in 1992, it will become clear that French President François Mitterand did not want a federal Europe. In his Guardian article, Bogdanor writes:

> "As long ago as 1990, when Jacques Delors, former president of the commission, told the European parliament that he wanted Europe to become a 'true federation' by the end of the millennium, the then French president François Mitterrand, watching on television, burst out: 'But that's ridiculous! What's he up to? No one in Europe will ever want that. By playing the extremist, he's going to wreck what's achievable.'"

And then Bogdanor continues with:

> "Few in Europe seek to submerge their country's national identity in a federation. Instead, they seek to pursue their own national interests constructively within a co-operative European framework. Perhaps Britain should have done the same."

With that 'submerge their country's national identity', it appears that he too - like Mitterand and many other European politicians - does not know that in a federation 'the country's identity' remains fully intact. By constantly postulating an opinion without knowledge, the intergovernmentalists are building a house of entropic disorder that will inevitably collapse.

Jacques Delors saw it better:

"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)

2.17 The European Congress 1948

From 7 to 11 May 1948, more than 700 people from 26 European countries, as well as observers from the United States and Canada, met in The Hague: The Congress of Europe. Everyone of political weight was there. The English delegation included Winston Churchill, Harold MacMillan, and Anthony Eden. For France, there was Paul Reynaud, François Mitterand and Pierre-Henri Teitgen. Konrad Adenauer, the later German Federal President, represented Germany. There was also Paul Henri Spaak from Belgium and, of course, Altiero Spinelli from Italy. A number of philosophers were present, along with artists, Nobel Prize

winners, economists, church leaders, professors, lawyers, journalists, and entrepreneurs. A colourful gathering, all aimed at contributing to European unification.

This congress, organised by the Coordinating Committee for European Unification, laid the foundation for the later political, economic, and monetary union, the establishment of the Council of Europe[62] and the drafting of the European Convention on Human Rights, to be implemented by a European Court of Justice.

The importance of this congress lay in the great unanimity to build a new future for Europe with new laws and new organisations. But because they had already been engaged in a process for three years, in which they no longer knew or ignored the foundations of federal statehood - as Spinelli had pointed out - all the proposals at that congress were contained in terms of the conclusion of treaties: the playing field of government leaders, administrators. As far as the concept of 'representation of the people' was concerned, they got no further than calling for a European deliberative assembly.

That never reached the level of a parliament of representatives elected by the people; nor a constitution based on the trias politica with checks and balances. The result is today's European Parliament, which, although it has its own decision-making power from time to time and in parts, is a sad joke from a democratic point of view, in the order of correct constitutional law. We also see this in the United Nations treaty system. The General Assembly as an intended parliament is not a parliament for the simple reason that the five permanent members of the Security Council with their system of unanimous decision-making are in charge. Just as the European Council of 27 Heads of Government and State takes decisions on the basis of unanimity. A way of working that leads to an exchange of national interests with the threat of a veto[63] behind one's back. Democracy? Forget it.

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[62] The Council of Europe, established on 5 May 1949 by the Treaty of London by ten member states, is an international organisation of forty-seven European countries and six non-European countries. The Council is not part of the European Union and focuses primarily on promoting unity between member states. With special attention to the European Convention on Human Rights. Do not confuse it with the European Council, the 27 Heads of Government and State that call the shots in the European Union.

[63] On 8 November 2020, Hungarian media reported that Prime Minister Victor Orban, in a letter to Ursula von der Leyen - President of the European Commission, threatened to veto the EU's multi-year budget if European subsidies to Hungary were linked to the EU's demand that Hungary respect the rule of law. Reason: Orban has been working for some time to amend the Hungarian constitution so that he can become autocrat.

See this Congress of Europe in 1948 as a consolidation of the view, already started in Hertenstein in 1946, that the state-building of the future Europe should have an intergovernmental status of one or more treaties.

2.18 The Schuman Declaration, 9 May1950

That gradual process of exponential deviation (positive feedback) from Spinelli's original elementary aims - working from the fundamental approach from Althusius to the Federalist Papers - found its fulfilment in the Schuman Declaration, or Schuman Plan, of 9 May 1950. On that day, Robert Schuman - Minister of Foreign Affairs in the French Government - delivered a short but historic speech. See the three crucial sentences where the most important words are highlighted:

> "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 these regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims."
>
> 
>
> "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 **United States of Europe** indispensable to the preservation of peace."
>
> "The essential principles and undertakings defined above will be the subject of **a treaty signed between the States** and submitted for the ratification of their parliaments."

Check the highlighted words: *who reads, learns*.

The third quotation opposite the first two is exactly the line of development from Hertenstein. Twice, Schuman emphasizes the importance of a federal Europe, but places the elaboration of this in a treaty. So, intergovernmental cooperation. And that is not federal cooperation. Simple basic constitutional law. A federal state is only a federal state when it has a constitution. A treaty does not provide for that.

From 1950 until today, this mistake by Schuman has placed a disproportionate burden on the goal of experiencing the conglomeration of EU Member States as a true Union. After Schuman's Declaration, the question arose: 'What will happen now? Will it be a federal state or a confederal group of loose states?'

Since it was not possible to give a clear answer, politicians opted for the solution they always have at hand when they create an institution that does not comply with

standards of law and organisation. Then they call it an *'organisation sui generis'*. That means an 'organisation that stands alone'. It is a legal panacea - a magic formula - that for a short period pushes unpleasant questions into the background, but then is the source of constant problems because there are no legal and organisational criteria or standards on how to treat an organization' sui generis'. Attempts to solve them create new problems. These will be discussed in detail later in this Chapter 2. Once started wrongly, the problems do not stop and operate like a process of inbreeding. This led in 2007 to the birth of the monster known as the Lisbon Treaty, which came into force in 2009 and since then has been a divisive issue, bringing the Member States into a constant state of conflict.

Jaap Hoeksma[64] describes this phenomenon with the following words:

"For decades, it has been common practice in academic circles to refer to the EU as a rare bird, an 'avis rara' or an organisation 'sui generis'. Political theorists and lawyers alike tend to agree that the nature of the beast is so hard to determine because it seems to be composed of two different animals. It is said to have some of the hallmarks of a federal state, but also some features of a confederal organisation of states. For that reason, the avis rara is being described by scholars as a platypus, the creature which astonished observers on the Australian continent since it appeared to be a duck and a mammal at the same time! After the entry into force of the Lisbon Treaty, however, it may be suggested that the present EU resembles an ostrich. The nature of the beast has been established beyond doubt, but the poor animal buries its head in the sand out of fear that it will have to accept itself for what it is: neither a state nor an organisation of states, but a democratic union of democratic states."

We agree with this description of the nature of the European Union, except for the very last phrase "... but a democratic union of democratic states." The word 'but' should have been 'let alone'. In this Toolkit, we have shown in detail that the EU is in no way a democratic union: no constitution, then no democracy.

A question mark must also be placed over Jean Monnet's role in the Schuman Declaration. Earlier, he came up as the co-author of the offer that Winston Churchill made to his French colleague Paul Reynaud in June 1940. Monnet had worked for a time in America in the vicinity of President Roosevelt. His contribution

[64] Jaap Hoeksma, The European Union; from organisation 'sui generis' to democratic regional organization, in: Federal Trust, 26 February 2021.

in June 1940 was based on correct knowledge of elementary federalism. And thus, also the knowledge that precisely the rejection of a treaty - the 'Articles of Confederation' - in 1787 by the Philadelphia Convention marked the birth of the American federation. The question that thus arises is: 'How could Monnet - who is known to have advised Schuman in May 1950 on the text of the Schuman Plan - have allowed Schuman to make the mistake of all mistakes by advocating a federal Europe based on a treaty?'

Let's have a look at the five interventions discussed - figuring as a slow process of deviating further and further from the right course during the critical post-war phase:

(a) Hertenstein 1946: a conceptually incorrect attempt to mix federal organisation with intergovernmental organisation.

(b) Zurich 1946: a political abandonment of the pursuit of a federal Europe with England and opting instead for the intergovernmental Commonwealth.

(c) Montreux 1947: a methodological fork in the road: elementary federalism based on standards versus an intergovernmental movement; the start of a school fight among federalists.

(d) The Hague 1948: consolidation of administrative, intergovernmental thinking, increasingly distant from federal state formation.

(e) Paris 1950: *Alea iacta est*[65], the die is cast. Schuman's choice of a treaty-based approach, rather than a federal one, is an irreversible political fact.

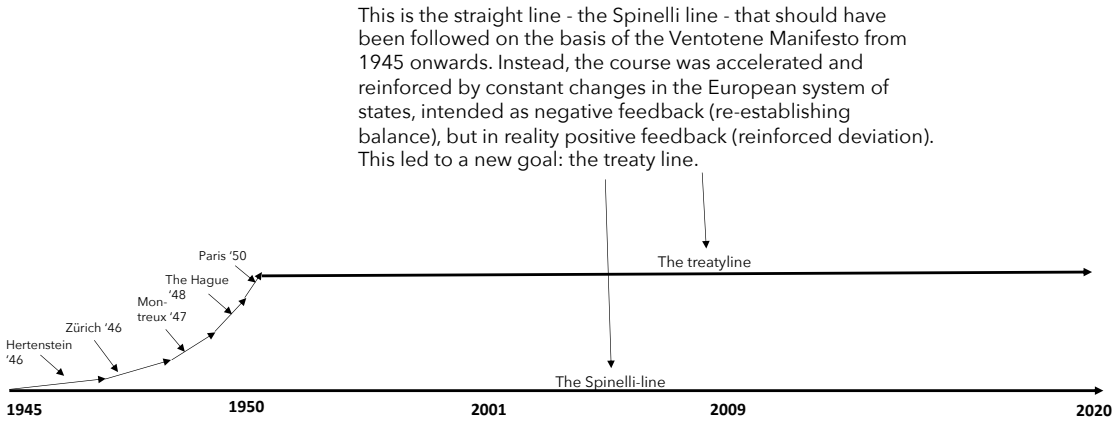
The process from 1946 to 1950 marks several successive classic movements of a positive feedback mechanism. The following section contains a drawing that shows the reinforced and accelerated deviation from the 1945 course.

2.19 The period 1945-1950 in drawing

The critical post-war phase from 1945 to 1950 started with the knowledge complex of federal state formation according to Spinelli, based on the thinking of the authors of the Federalist Papers, who in turn derived the federal standards from the Philadelphia Convention.

[65] With these words, Julius Caesar, on 10 January, in the year 40 BC, crossed the Rubicon to make it clear to the Senate in Rome that he, and he alone, was in charge.

In the drawing below, the straight line from 1945 to 2020 marks the doctrine of elementary federalism. From 1945 onwards, a process of deviation from that doctrine began. Without corrective negative feedback. That is why the deviation is not linear but exponential, the manifestation of positive feedback. For the record, the white area below will gradually be filled with the drawings of the other phases up to 2020.



2.20 The period from 1950 to 2001: reinforcing the course of change

With the Schuman Declaration of May 1950 in Paris, European government leaders received free administrative space to start European unification with the instrument of treaties. A new goal: federalisation through treaties. The possibility of establishing a European federation on the basis of a federal constitution was over. Government leaders cannot create a federation. They can only establish administrative cooperation. Thus, the European state system became - according to the inescapable process of 'like for like' - a gathering place for intergovernmentalists.

After the Schuman Declaration in 1950, government leaders started working on the unification of Europe with successive treaties.

The first example of the treaty-based approach was the establishment of the European Coal and Steel Community (ECSC) by the Treaty of Paris, which was signed on 18 April 1951 and entered into force on 23 July 1952. The six founding countries were: France, West Germany and the three Benelux countries of the Netherlands, Belgium, and Luxembourg. There was a High Authority, an administrative body, with Jean Monnet as its first chairman. As advisor to President

Roosevelt and Prime Minister Churchill in June 1940, he was still advocating a European federation on the model of the United States, but in 1951 he became the supreme leader of the first European intergovernmental system of states[66].

The aim of the ECSC was to make each other dependent on the use of coal and steel for the production of weapons. Thus, one state could not arm itself without the knowledge of the other. After 1951 about twenty other states joined this treaty. This alliance ended in 2002.

After 1951, treaties moved quickly. The most important ones are listed below. It shows how tempting working with treaties is. Administrators take decisions, have a treaty drafted and present their parliaments with a fait accompli; occasionally sweetened by giving them a form of participation, but without a true constitution with a fundamental trias politica and its necessary checks and balances.

2.20.1 Accelerated and strengthened course

These are the most important treaties following the establishment of the ECSC:

The 1957 Treaty of Rome, which came into force on 1 January 1958. This treaty created the European Economic Community (EEC) and the European Atomic Energy Community (Euratom). It implied an extension of the concept of European integration to include general cooperation in the economic field.

The Brussels Treaty (Merger Treaty), which entered into force on 1 July 1976. This treaty envisaged an institutional restructuring. No longer a High Authority, but one European Commission, one European Council for the management of the ECSC, the Euratom and the EEC. This treaty ended with the Treaty of Amsterdam on 2 October 1997.

The Single European Act, which came into force on 1 July 1987. Another reorganization of the European institutions due to the accession of Spain and Portugal and the advent of the single market[67].

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[66] The European Union honours Jean Monnet for all his achievements. He is seen as one of the driving forces behind the EEC and the Euratom. He received prestigious prizes, was made an honorary citizen of Europe and several universities created Jean Monnet Chairs. Nevertheless, it is amazing how someone of that quality could have gone from being a federalist to being an intergovernmentalist. Spinelli, incidentally, could also not resist the temptation to join Europe's evolving intergovernmental administration. He was a Member of the European Parliament from 1970 to 1976 and a European Commissioner from 1976 to 1986. But his aspiration for a federal Europe based on a constitution remained unchanged. In 1980, he founded a group of federalist MEPs who again tried to give the European Union a federal constitutional basis.

[67] The internal market is the free movement of goods, persons, services, and capital within the Union without internal borders.

The Schengen Agreement in 1985. This agreement marked the beginning of the abolition of internal borders.

The Maastricht Treaty of 1992, which came into force on 1 November 1993. Known as the Treaty on European Union, it is one of the partial treaties of the Lisbon Treaty. This Maastricht Treaty is important in the context of the concept of negative feedback. The objective in Maastricht was the preparation of the European Monetary Union (EMU). The Netherlands - in the person of Prime Minister Ruud Lubbers - entered into consultations with proposals for a federal basis for that EMU. This was stopped by the German Chancellor Helmut Kohl and the French President François Mitterand. The reason for this was that Lubbers was not in favour of Kohl's ambition to reunite East and West Germany after the fall of the Berlin Wall in 1989. Kohl had an ally in Mitterand, who in return demanded that the idea of a federal foundation under the EMU be abandoned. And so it happened. All in all, therefore, this Treaty failed to act as a corrective negative feedback to federal state formation.

The Treaty of Amsterdam 1997 entered into force on 1 May 1999. Another reorganization of the institutions in connection with the accession of new Member States and a so-called consolidation of previous treaties. Consolidation is intended to alleviate the proliferation of treaties within the system of treaty law by merging treaties and then renumbering the articles. From the point of view of one of the most difficult issues in constitutional law - namely, creating transitional law in such a way that treaties and directives can still be found and used (harmonized) within legislative procedures - this is essentially a hopeless task. Made more difficult by the fact that the construction of those treaties always had to be guided by the need to satisfy specific interests of Member States that demanded exceptions to the general rules. A pure form of nation-state anarchy. The later Treaty of Lisbon has - partly - in this way led to a legal monster.

There are more intergovernmental treaties, regulations, and agreements. But this should suffice for the picture of the entropic-chaotic constitutional complexity of the successive major treaties. This is particularly evident in the recurrent need to consolidate treaties, always burdened with the many opt-outs, the exceptions that Member States negotiated for themselves. The consolidations are in themselves negative feedback movements to seek a legal and organisational balance after a period of increasing disorder. But in the overall perspective, they are one big reinforcement and acceleration of the ongoing course deviations.

The need to consolidate successive treaties that got in each other's way was not only evident with the Treaty of Amsterdam. After 2001, consolidated versions of

the Treaty on European Union appeared in 2016, the Treaty on the Functioning of the European Union in 2016, the Treaty establishing the European Atomic Energy Community in 2016 and the Charter of Fundamental Rights of the European Union in 2016. With a huge number of articles. Although all intended to correct entropic disorder with new regulation, on balance it only added more disorder to the European state system, contributing to the fifth cycle of war that has been building up since 1945.

Compare this constitutional disorder of the EU state system with the seven-article federal Constitution of the United States of America, which, with its twenty-seven amendments, has held fifty states together[68] over the years. That is constitutional law of the highest order. The quality of European constitutional production from 1951 onwards deserves only a fat zero. It is a source of disquiet and unrest in EU Member States. And a breeding ground for populist and nationalist politicians to oppose 'Brussels', a European Union that is organising its own Waterloo.

2.20.2 The drawing of the 1950 to 2001 phase

The foregoing is shown in the following drawing. The bottom line from 1945 to 2020 - the Spinelli line - is the course that should have been taken from the end of the Second World War. If that process had been led by people with an understanding of federal state formation - and with the courage to draw consequences from that knowledge - it would have been achieved with simple negative feedback movements to adjust deviations from that course in the interim. This did not happen. While the deviation of the course began in the phase from 1945 to 1950, it continued exponentially from 1950 onwards.

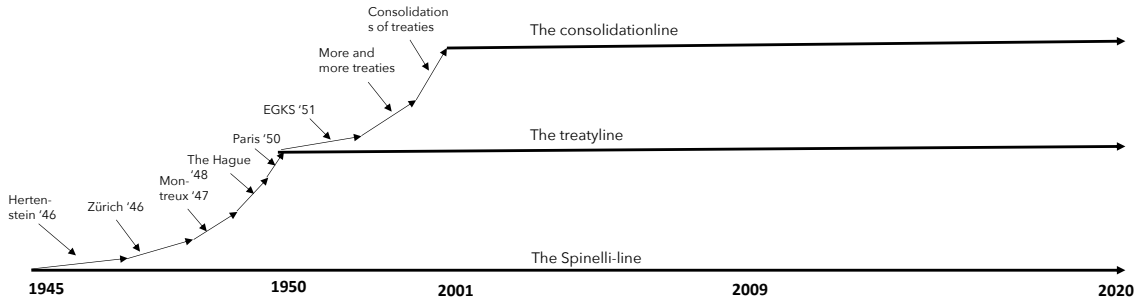
This year now marks a new horizontal line. After all, with the Schuman Plan of 1950, a new order of the European system of states began, this time aimed at the unification of Europe on the basis of a system of treaties. The first step on that course was the creation of the ECSC in 1951. A further departure from the original line 1945-2020.

From the Treaty of Rome in 1957, the system of working with more treaties accelerated and strengthened. It thus shows a positive feedback reaction: even further away from the original line.

[68] Only in 1860/1861 did 11 states unilaterally leave the US Federation. This took place between the moment Abraham Lincoln was elected and the moment, a few months later, of his official entry into office. These eleven states were economically dependent on slavery and feared that Lincoln would abolish slavery as soon as he took office. However, he did not do so. He started a war against the abolished states on the basis of an article in the federal constitution that forbade unilateral abolition. The federal government won this civil war in 1865, after slavery had been abolished in 1863.

With the Maastricht Treaty, the Netherlands intended to change course and return to the original line by arguing for a federal foundation under the European Monetary Union (EMU), but because this did not happen, it is not shown in the diagram.

The final acceleration and reinforcement of positive feedback lies in the regular consolidations: the need to shuffle treaties together and renumber articles. Desperate attempts to create legal order, however, create even more disorder because it is not possible to do justice in this way to one of the most difficult legislative doctrines, namely, to design clear and unambiguous transitional law so that everyone knows what applies now and what does not. Consolidation, which in itself is well intended, and which also took place in the next phase between 2001 and 2009, only creates more problems of interpretation and conflicting articles (collision). Therefore, another new line, the consolidation line.



2.21 The period from 2001 to 2009

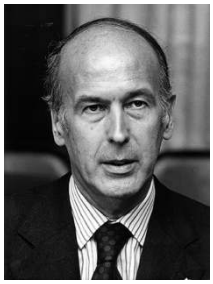
By the year 2001, such disquiet and unrest had risen to the point where it was time for a 'special trick'. The chaotic intergovernmentalism elicited bursts of federal thinking throughout the Union. This led to the creation of the 'Convention on the future of the European Union', according to a decision of the European Council in December 2001.

The aim was a Convention in the vein of the Convention of Philadelphia 1787, with the task of drawing up a draft federal Constitution for the European Union. But .... with the reservation that the European Council - that is the group of not-elected

Heads of Government and State - would have the last word. You will now understand what that last word would mean in the context of democratic procedures.

In July 2003, the Convention produced a 'Draft Treaty establishing a Constitution for Europe'. By linking the word 'Treaty' with the word 'Constitution' it was called a 'Constitutional Treaty'. There is no such thing. Just like a pregnant man. Something is a treaty, or it is a constitution. A 'Constitutional Treaty' is a non-existent phenomenon. Chapter 11 lays down requirements of competence and suitability for future leaders of a federal Europe including thorough knowledge of constitutional law.

The process of the formation of this so-called 'Constitutional Treaty' between 2001 and 2003, with a devastating blow in 2005 and a further deviation of the just path between 2005 and 2009 will be described here.



In short, this attempt to leave the intergovernmental path and return to federal statehood was a complete failure. This was because the European Convention, led by the French statesman Valéry Giscard d'Estaing, was wrongly set up and because there was no one in it who understood federal statehood, or was prepared to fight for respecting standards of federalism.

The Convention was called on the basis of the Laeken Declaration of 2001, based on the questions of how the European Union should proceed, what improvements were useful and necessary and, above all, what geopolitical position the Union should aspire to. The Convention was to result in a new text to replace all existing European Treaties. So, instead of consolidating conflicting European treaties by shoving them together as best as possible, the EU should finally exchange them all for a single document: a federal constitution in the image and likeness of the constitution that the Philadelphia Convention had designed in 1787. That was to be a good basis for a new European Union with a flexible administration and capable of enlargement to up to twenty-five - or more - Member States. The Convention's product would then be assessed at an Intergovernmental Conference and, after any changes, adopted by the European Council of Heads of State or Government. These two conditions alone - assessment by an Intergovernmental Conference and adoption by the European Council - should have set alarm bells ringing among federalists.

So, it all went wrong:

- No fewer than two hundred and seventeen people took part in the Convention: representatives of the Member States, the national parliaments, the European Parliament, and the European Commission; representatives of thirteen countries that were waiting to join the EU; delegates from various European institutions and civil society organisations such as employers' and workers' organisations, non-governmental institutions, representatives of universities. Such a number of members, added to their national backgrounds and institutional interests, ensured a mishmash of political and institutional folklore and the safeguarding of own interests instead of thinking from common European interests.

- After sixteen months of consultation - organised by national, regional, and private interests - the final product (accepted by two hundred and nine of the two hundred and seventeen members) was submitted to that Intergovernmental Conference of representatives of the governments of the then member states and of the states that were to join. So, the draft in terms of what was supposed to be a federal constitution came into the hands of people who were intergovernmentalists, burdened and loaded with the intergovernmentalism developed since 1946, far removed from federalism, and by their function in the inevitable process of ‘birds of a feather flock together’, aimed at securing their own national, regional, and private interests.

- This Intergovernmental Conference worked on it from October 2003 to June 2004, after which the European Council - the decision-making intergovernmental body that, by correct constitutional standards, should never have existed - took a final decision on it on 18 June 2004. The Treaty, referred to as a Constitution, was signed in Rome on 29 October 2004 by the Heads of State and Government of 25 Member States.

- Ratification by the individual countries then had to take place. For ten countries, including France and the Netherlands, this had to be done by referendum. Its history is well known. In France and the Netherlands (2005) this 'Constitutional Treaty' was rejected by referendum. Although not because of supposedly federal characteristics, but because the political class in France and the Netherlands had by now created great resistance among the people to the growing power of 'Brussels'.

- Subsequently, the rejected text was tinkered with intergovernmentally for several years. This resulted in the Treaty of Lisbon in 2007, which came into force in 2009. This is without doubt the worst legal document ever created in Europe. A law student who would write something like this in his thesis would immediately receive the 'consilium abeundi': the advice to leave.

Here we encounter an incomprehensible aspect of human behaviour. One took the outline of the Philadelphia Convention (1787) as a guide. That Convention consisted of just fifty-five people who had so many brains and courage that within two weeks they threw away the Treaty they were supposed to be adapting and then, in a few months, designed a seven-article federal Constitution of, for and by the people. One would expect the mandate for Valéry Giscard d'Estaing and the members of the Convention in 2001 to be based at least on that approach. Not so. Exactly according to the intergovernmental delusion of the time, the Convention was stuffed with everyone who felt they had to be involved on the assumption that their absence would lead to an inferior product. From the outset, the thinking was in terms of 'own country, own region or own organisation first'. An accumulation of national, regional, and private interests far removed from thinking in terms of common European interests. In the words of Karel van Miert, former European Commissioner for Transport:

"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."

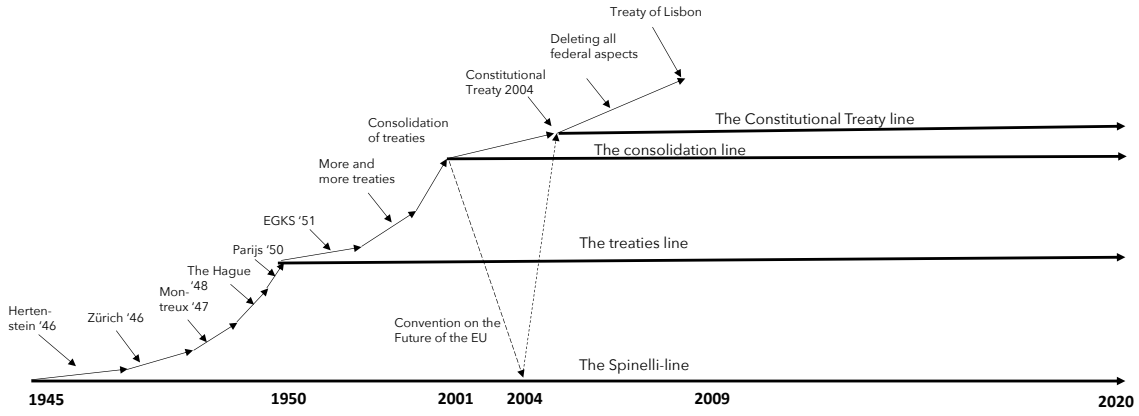
Most people think it is normal that everything that is made - whether it is a loaf of bread, or a house, or a car, or a rocket, or a computer - must be made by skilled craftsmen. They buy it because the support for that decision is based on the knowledge, or the assumption, that no amateurs or buglers have been at work. And therefore, the product does not suffer from system faults. No one buys a computer or gets into an aero plane until they have participated in its construction.

But in this process of composing a constitution for Europe on the basis of the work of the Philadelphia Convention, people got carried away. It was considered normal to put a few hundred amateurs and bunglers to work on the constitution. The most important work in a democratic society, in fact. Work that can only be entrusted to professionals. Supported by (groups of) citizens, of course, but with a scientific mandate for the members of the Citizens' Convention. That was totally absent. Thus, the intention to return to the Spinelli line arrived seven years later in a reinforced form of the intergovernmental operating system: the Treaty of Lisbon. Exactly the opposite of the aim of that Convention of 2001-2003. This is how

positive feedback works when one leaves professional work to people without relevant knowledge, but driven by national, regional, and private interests[69].

2.21.1 The drawing of the 2001 to 2009 phase

The establishment of the Convention on the Future of the European Union was an intention to create a negative feedback reaction in the direction of the original line - the Spinelli line - of federal state formation from 1945 onwards. But the actual way of working was the opposite. Given the intention in 2001, there is a line all the way down as if it were a negative feedback movement. Until 2004. But in fact, from the moment the Convention on the Future of Europe came into force, the EU continued to work intergovernmentally. Nevertheless, in order to do justice to the intention to create a federal constitution, there is a line back to 2004 - in other words, to the straight line - and then up again in order to link up with the ongoing strengthening of positive feedback. Because this was non-negative feedback, the lines in question are drawn in the form of a dotted line. Also, to do justice to the fact that there was positive instead of negative feedback, the deviation is exponential.



[69] The corona pandemic has also brought pleasant innovations, in spite of its many sufferings. One of these is the respect for scientific insights that politicians must have if they are to make effective decisions. President Trump's lack of respect for scientific insights brought the USA to the forefront of the virus death toll. The practice in Europe showed how difficult politicians have it with that role. In the Netherlands - for example - medical experts in organised consultations with the political leadership have been on the verge of resigning because those politicians restricted the required scope for acting on scientific insights.

2.22 The period from 2009 to 2020

There was no European Constitution based on the thinking of the Philadelphia Convention. Instead, in 2009, the intergovernmental Treaty of Lisbon came into force, consisting of two partial treaties: The Treaty on European Union and the Treaty on the Functioning of the European Union. Since nobody understands that, of course, there had to be another consolidation. However, this is not relevant here.

Of course, European politicians also saw that in the second half of the decade 2010-2020, entropic disorder was growing significantly. And with it, the realization that it was time to try to restore order.

In March 2019, President Macron called for - again - a conference on the future of Europe. This led to a decision by the European Parliament and the European Commission in late 2019 to hold such a conference on Schuman-Day: 9 May 2020. But because of the Corona crisis, the launch has been postponed and it is still not clear when the Conference will actually take place.

The reason for organising such a conference is that the current operating system, based on the Lisbon Treaty, is showing more and more cracks. Not only has one Member State decided to leave the Union, but also contradictions within the Union on issues such as climate, migration, rule of law problems, subsidiarity, eurozone/euro, geopolitical actions, structural financial transfers and one-off financial transfers (CoronaBonds) and the policy of the European Central Bank (ECB) have led to a situation where the southern and northern Member States, the eastern and western Member States and all the Member States and Brussels are coming up against each other. All in all, plenty of reasons to reconsider the current operational system.

The question, however, is: how fundamental is the design of the envisaged conference on the future of Europe? In an article[70] entitled 'To err is human, but to persevere in error is diabolical', this concept was compared to the failed Convention on the Future of the European Union of 2001-2003, led by Valéry Giscard d'Estaing. For the full version, please refer to that article. Only the most characteristic aspects of the design of this 2020-2022 Conference are mentioned here:

- Because the intergovernmental system has exacerbated rather than reduced tensions between the member states, that 2020-2022 Conference wants to find

[70] See Leo Klinkers, in: Europe Today Magazine, 29 May 2020: https://www.europe-today.eu/2020/05/29/to-err-is-human-but-to-persevere-in-error-is-diabolical/.

a solution in correcting errors[71] within that system. It no longer refers to the doctrine of federal statehood in place of the intergovernmental system. While the Convention of 2001-2003 aimed at creating a federal framework based on the thinking of the Philadelphia Convention, the set-up of this 2020-2022 Conference on the Future of Europe lacks any reference to federal statehood.

- The aim is to draft new EU laws and - again - to amend the EU Treaties. Solutions will be sought in adjustments within the intergovernmental system of treaties and agreements.

- Guy Verhofstadt, former Prime Minister of Belgium, former leader of the liberal ALDE Group in the European Parliament, now member of the Renew Europe fraction in the European Parliament, also member of the Spinelli Group, is a candidate for the Presidency.

- The European Parliament leads the Conference. The European Commission has mandated three of its members. One in charge of preparing the conference in cooperation with the European Parliament, one in charge of representing the European Council in the conference and one in charge of monitoring the follow-up of the results of the conference in the form of new laws and treaty amendments.

- A steering group on organisational and logistical issues, consisting of representatives of the European Commission, the European Council and the seven political groupings in the European Parliament, will provide operational leadership.

- Representatives of the European Commission, the European Council, the European Parliament, national parliaments, representatives of regional parliaments and representatives of civil society are in charge of ratification.

- The European Council, however, will take the final decision on the outcome of the conference! Assuming that this Council - whatever the outcome of the conference - will decide to establish a federal Europe is pointless.

- The institutions mentioned are also in charge of implementing their concrete legislative proposals in laws and treaty amendments.

[71] System errors cannot be corrected and certainly not in a process of accelerating and amplifying deviations. The result of (attempted) correction is a new positive feedback reaction in the sense of: "One problem is solved but two come in its place". See Chapter 3.

- There will be six citizens' meetings, representing citizens all over Europe. They are in charge of drafting recommendations to be submitted to the above mentioned participants. These meetings are not members of the Conference. Meetings of about two hundred participants will be held in different cities.

- In November 2019, Germany and France launched the document 'Conference on the Future of Europe.' It is a Franco-German non-paper on key questions and guidelines. It raises questions about the difference between steering top-down or bottom-up.

- The Spinelli Group has repeatedly declared itself in favour of this conference. It raises questions about this group's position on the doctrine of federal statehood.

- The Union of European Federalists (UEF), like the Spinelli Group, is in favour of this Conference on the future of Europe, 2020-2022 even though in the design of the Conference any relation to federalism has been scrapped.

As a member of the European Parliament, Verhofstadt takes different positions. Sometimes he supports the idea of a federal constitution for a federal Europe. Then again, he advocates adjustments to the EU treaty system. If he indeed accepts the leadership of the conference, it is a choice for the second position. As a prominent member of the Spinelli Group, the question arises whether he will introduce - in his capacity as possible leader of the 2020-2022 conference - the magnum opus of the Spinelli Group's chairman, Andrew Duff, 'On Governing Europe'. This document is - again - a proposal to amend the Treaty of Lisbon on the assumption that changing the treaty system will automatically lead to a federal constitution; as noted earlier, the introduction of alchemy into constitutional law.

By the way, it would be strange if Verhofstadt were to lead the conference. His book 'The Sickness of Europe' (2017)[72], is a merciless reckoning with the perverse nature of the EU's intergovernmental operating system. No book so accurately and painfully exposes the serious flaws and errors of the treaty system. Verhofstadt even founded an anti-intergovernmental group with several other MEPs in 2010. It is therefore strange that he is available as a candidate for the presidency of this intergovernmental conference.

Now look again at the participants in the envisaged Conference on the Future of Europe 2020-2022. Here too, the organisation is based on a top-down listing of the interests of existing national, regional, and private organisations. A recipe for

[72] It is discussed in detail in Chapter 4.

multiplying intergovernmental systemic errors. The format of the 2020-2022 Conference is an extrapolation of everything that is wrong with intergovernmental thinking and will lead to a strengthening of polarization within the EU.

You don't believe it? Then read the following.

We do not yet know how many people will act as representatives of the EU bodies that all have some form of leadership of the conference. Nor do we yet know how many people have already influenced the organisation and objectives of the Conference in the phase before it begins. We do know, however, that this way of organising works, by its very nature, not from the general to the particular (deductive), but from the particular to the general (inductive): an aggregate of national, regional, and private interests. In other words, it will be an inventory of the wishes of individuals representing public and private bodies with their own interests. Exactly as it was done in the Convention of 2001-2003. This will be negotiated and lead to a treaty that is not based on a constitution of common European interests, but on the negotiated sum of specific national, regional, local, and private interests. These are then somehow crammed into a new treaty, with a series of opt-outs from general provisions and a strengthening of the powers of the European Council, in derogation from the principle of subsidiarity, to take any decision it deems useful in the interests of the Union. We repeat: it is the European Council of 27 Heads of State or Government that makes the final decisions on the production of all the representatives of all those public and private bodies. And of the recommendations of the citizens' meetings.

And then the entropic chaos will really multiply. Some forty-two parliaments will have to pronounce on that outcome. And about fifteen national courts. And there will have to be a referendum in - probably - about 20 countries. What will be the result of this accumulation of completely wrong regulation and organisation? And who will dare to take responsibility for it?

And what about the input from the six citizens' meetings? The President of the European Commission, Ursula von der Leyen - describes the required citizen input as follows (Political guidelines for the next European Commission 2019-2024):

"I want citizens to have their say at a conference on the future of Europe, which will start in 2020 and last two years. The conference should bring citizens together, including an important role for young people, civil society and the European institutions as equal partners. The conference should be well prepared with a clear scope and clear objectives agreed by Parliament, the Council and the Commission. I am ready to follow up, if necessary, on the agreed legislative measures. I am also open to treaty amendments."

Two comments: (a) The EU's three main institutions set the course. As always, top-down thinking. (b) Von der Leyen also sees an adaptation of the Lisbon Treaty as a result of this process.

On 9 May 2020, the celebration of the 70th anniversary of Schuman Day, the Spinelli Group launched the following statement:

> "The Conference on the future of Europe is the chance to relaunch the process of European unification along federal lines first envisaged in the Schuman Declaration."

On the same day, the President of the Union of European Federalists (UEF) said:

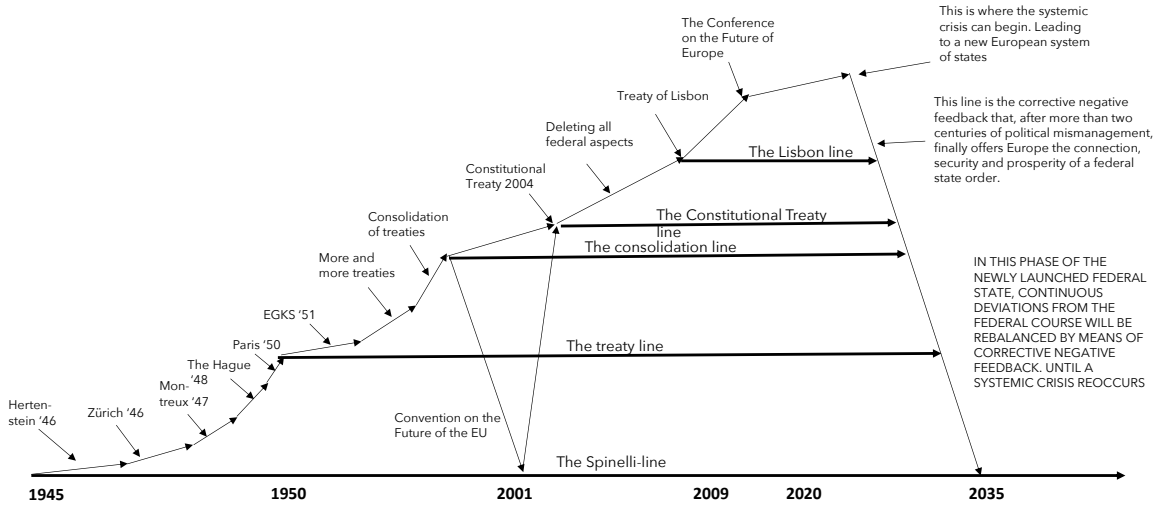
> "The Conference 2020 represents a historical opportunity towards a sovereign democratic and federal Europe."

This raises questions in the context of the saying: he who reads, learns. How is it possible that they see a federal feature in Conference 2020-2022? Didn't they read the set-up of this Conference: no federalism. Have they not learnt the purpose of the conference, which is to do away with every aspect of federalism? Have they still not read the Schuman Declaration and seen that Schuman's call for a federal Europe was not pushed into a federalist but an intergovernmental approach? How is it possible that the Spinelli Group and the UEF do not respect their own founder, Spinelli, who said in the Ventotene Manifesto, among other things: "... the rational organisation of the United States of Europe, which can only be based on the republican constitution of federated countries.

2.22.1 The drawing of the 2009-2020 phase

Working with the Lisbon Treaty exponentially increases the already existing tensions between the Union and the Member States. Including Brexit, the tensions between groups of member states and between individual member states and the EU. In the drawing, this is expressed with a continuous line of positive feedback. It ends with the announcement of the (still postponed) Conference on the Future of Europe, planned between 2020 and 2022.

If this Conference is indeed going to take place according to the outline described above, then the entropic disorder will culminate in an eruption, the moment of the great systemic crisis, leading to a new European state system in the form of a federal state. That is drawn with the meta-negative feedback line, all the way back down to Spinelli's original basis of federalism. The completion of this European Federation is estimated at 2035.



In this picture, any transition in the sense of adaptation of the EU system of states is a form of 'non-systemic warfare in a phase of a war cycle'. Gradually, the regulation of increasing tensions becomes less and less effective. This ineffective regulation increases tensions. This propels the EU system of states to a critical status that in the past always resulted in a systemic crisis, leading to a new international order. The European intergovernmental state system has run out of steam and is at the end of its life cycle. There is no more room for a new - possibly innovative - adaptation, other than through a meta-negative feedback to the original 1945-2020 line.

For the record, exactly the same thing is happening within the global state system of the United Nations. The signs of intensified rivalry between superpowers, of ineffective peacemaking, peacebuilding, and peacekeeping, as a result of which there are still regional wars and violent conflicts, more than eighty million refugees, still occupations, oppressions and exploitation of peoples who cannot defend themselves against a ruler, the reason for the existence of the Unrepresented Nations and Peoples Organization (UNPO), a group of more than forty peoples whose self-determination is illusory[73]. The San Francisco Promise of 1945, the birth of the United Nations, promised gradual improvements to the UN intergovernmental treaty, a promise that has not been kept. The price is paid by

[73] On 14 August 1941, on the American cruiser USS Augusta, President Roosevelt and Prime Minister Churchill signed the Atlantic Charter, the basis for the United Nations Convention in 1945. Paragraph 3 of that Charter stipulated the right to self-determination for every people in the world. The existence of the UNPO marks the fundamentally flawed state system of the United Nations as the cause of its failure to comply with this rule of the Atlantic Pact and of all subsequent written rules and created UN institutions to guarantee that self-determination.

the expected systemic crisis leading to a world federation based on an Earth Constitution[74].

On page 172, Piepers describes the development of the European state system up to 1945 with words that are fully applicable to the period described in the previous drawings after 1945. A quotation seems appropriate here:

> "The dissipative structure was instrumental in a phase transition with two complementary effects: the basis for a state of equilibrium and thus political unification in Europe and scaling up of the state system to a global level. The dissipative structure was driven by population growth and the increasing rivalry between European superpowers. You could say that the connectedness of Europe and the European state system was the driver of the dissipative structure. This connectivity contained an ever-increasing contradiction - intrinsic incompatibility. During the period 1480-1945, not only did the mutual dependence of European states increase systematically, for example to achieve and maintain a certain level of prosperity, but also the security dilemma, which is inherent to the state system and closely linked to rivalries and conflicting interests between states in the European state system. This contradiction was responsible for the production of tension in the system of states. The function of an international order is to bridge the incompatibility inherent in the system of states and make it workable. But it is always a matter of time before an international order succumbs to its own inconsistencies and the tensions generated. These inconsistencies are the result, among other things, of the differentiated development of great powers."

Now the concept of feed-in is added to negative and positive feedback.

2.22.2 Feed-in in addition to negative and positive feedback

Negative feedback is the undoing of a deviation and thus restoration of balance.

Positive feedback is reinforcement and acceleration of a deviation. If a movement is aimed at a goal and on the way to that goal a deviation occurs, taking the wrong measure to correct the deviation leads to an exponential deviation of the course.

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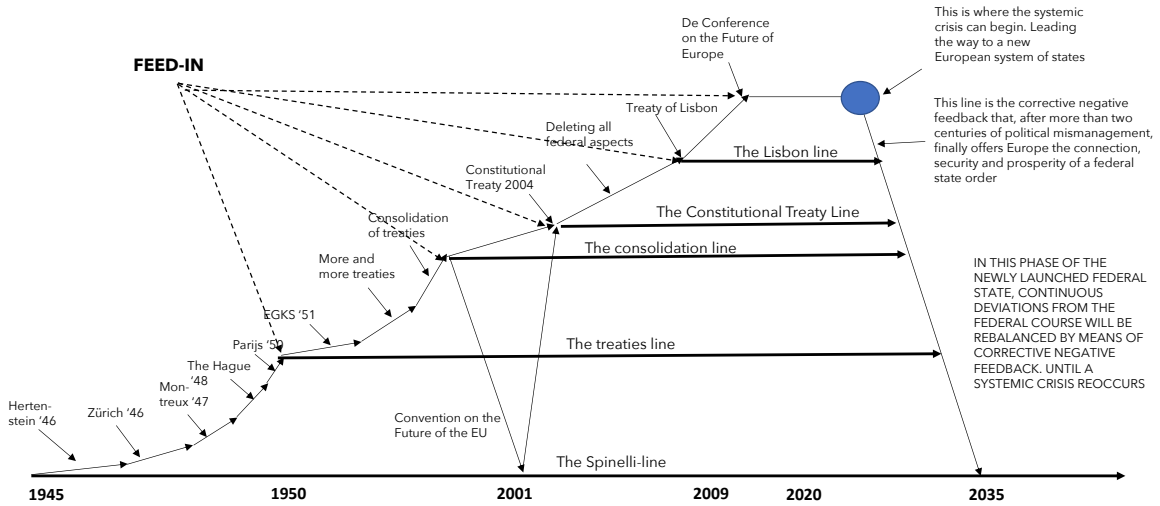
[74] In the Magazine of the Democratic World Federalists (DWF, San Francisco) of 24 september 2020 the President van de DWF, Roger Kotila, writes under the title 'United Nations World System Is Wrong- Weak & Small Nations Suffer': "Professor Martin's analysis of the UN World System Ideology is invaluable to understand why the UN cannot do its primary job. Wars continue unabated. A nuclear arms race is underway. What is wrong? The following excerpts illustrate the reality at the UN that makes it difficult to impossible for the UN to do what is really needed. For example, the 17 Sustainable Development Goals can't be met. Democratic World Federalists sponsor a strategy called THE SAN FRANCISCO PROMISE which asks the UN General Assembly to launch UN Charter Review using the EARTH CONSTITUTION as a model new world charter/constitution to establish a "new UN."

Feed-in is the adjustment of the target. This happened five times between 1945 and 2020:

- In 1950 by choosing to build the post-war European state system with treaties rather than building a federal Europe in accordance with the Ventotene Manifesto.
- By 2001, the reinforcing deviations led to the realization that a return to a federal course was desirable. With the Convention on the Future of the European Union, there was an intention to return to the 1945-2020 baseline with a recovery movement. That failed. In fact, positive feedback movements continued. The intention is therefore drawn with dotted lines.
- With the advent of the Lisbon Treaty, a new course was set again, whereby the ongoing deviation brought about the realization to take a fundamental look again at the set-up and functioning of the EU system of states, leading to the formulation of a new goal in 2020.
- All in all, an accumulation of entropic disorder with increasingly shorter periods, indicative of the build-up to the critical phase just prior to the outbreak of the systemic crisis.
- In the drawing, the circle marks the moment when the systemic crisis breaks out. This is then placed in time, including the reasoning behind the creation of a federal Europe after the crisis.



2.22.3 The meta-character of the corrective negative feedback

The systemic changes between 1946 and 2020 were intended to regulate tensions - caused by intergovernmental interdependence - between member states. But now the moment is coming when they can no longer be neutralized, and a system

war/crisis breaks out. This will cause the ongoing process of positive feedback to give way to an enormous negative feedback movement.

Therefore, corrective system wars/crises are a form of meta-negative feedback. The line from the circle back to the 1945-2020 line, and beyond, symbolizes this. It is an extensive restorative movement to restore the balance that Spinelli offered - a federal Europe based on elementary standards of federal statehood.

In itself, of course, from the point of view of the need to establish a federal Europe, this is a good thing. But we are not blind to the perhaps indescribable damage that a new systemic crisis could cause. According to Piepers, there is no point in asking who should be held to account. According to the analytical model through which he explains the sequence of four system wars/crises since 1480, each subsequent system war is inherent in the redesign of the state system after the previous one. Piepers (p. 222): "Even without Hitler, a Second World War would have broken out. It would have been a different variant, though." After only about twenty-five years, the next one is now coming. Peeps (p. 192): "...all the signals are at red, but they are being ignored." Well, not by the Federal Alliance of European Federalists.

2.23 The critical phase and the system crisis

We would like to repeat a quote from Piepers' book (p. 208):

> "A system war is a fundamental change and is not limited to war activity in a limited sense; there is war activity in combination with alliance building and a political negotiation process, in which agreements are made between major powers about spheres of influence and the rules of play for a new international order. A system war is therefore also about values. It is actually better to speak of a system crisis instead of a system war."

The phases before and after the four system wars/crises in the past always had critical periods. In the phase before, an excess of tension and conflict is built up that does not lead to temporary new equilibria via negative feedback corrections of a non-systemic war. The increasing entropic disorder can then only lead to a systemic crisis, usually after a relatively limited cause. For example, the murder in 1914 of the intended heirs to the throne Franz Ferdinand of Austria and his wife on 28 June 1914, which led to the First World War. Or like the German invasion of Poland in 1939 that sparked off the Second World War.

In the critical phase after a systemic war, a new system of states is then designed through negotiations and new spheres of influence. After the First World War, this was the League of Nations based on the Treaty of Versailles 1919. Because this

treaty contained the classical system errors[75], it could not fulfil its function as a global state system, after which a new critical phase slowly started building up before the Second World War.

A systemic war offers superpowers the opportunity to seek a new balance, which is then laid down in a new international order. They do, however, ensure that their interests are well defined. A classic example is the way in which the five superpowers of the Second World War, when constructing the United Nations, appointed each other as permanent members of the Security Council, each with the right of veto. One cannot be further removed from a democratic legal order than through the use of such a means of power. The UN is a global state system based on nation-states: self-interest first. And then it is just waiting for the next cycle of war to show a new critical phase.

2.23.1 How do you recognise a critical phase?

We are now in the middle of a new critical phase in 2021. For the global system of states, because of the increasingly poor performance of the United Nations in areas such as peacemaking, peacebuilding and peacekeeping, human rights, and international law on self-determination[76]. For the European system of states, because of an enhanced form of positive feedback since 1946, which has now created such a conflictive Union that we are waiting for the trigger that will burst the bomb. It is a matter of guessing what the trigger will be. Will it be global? Will it be because of China's vision of its planned development until 2035 - announced at the end of October 2020? Or geopolitical wrangling over the recently concluded trade agreement between the European Union and China? Or a trigger within the European Union itself? Or violent internal opposition to sudden autocratizing of yet other member states in addition to the process of autocratization in Hungary and Poland? Or an attack on a member of the European Council? Or a reignited conflict between Hungary/Poland on the one hand and the other Member States

[75] The main systemic flaw of a treaty is the fact that states that do not want to abide by it - i.e., do not act on the basis of 'pacta servanda sunt' (treaties must be respected) - can ignore it with impunity. Thus, in the early 1930s, Hitler, vested with the power to make emergency laws - the most important instrument of autocrats - was able to seize total power, including the construction of an industrial military complex. In violation of the Treaty of Versailles.

[76] The intergovernmental UN has 193 Member States. Having signed and ratified treaties in the field of international self-determination, they must comply with them. If not, the General Assembly - on the recommendation of the Security Council - can expel such countries from the UN on the basis of Article 6 of the UN Charter. We are still waiting for China to be expelled for its oppression of the Uighurs, Israel for its oppression of Palestine, Indonesia for its oppression of the Moluccas, Cameroon for its oppression of the English-speaking part of the population, Myanmar and the Rohingya, and so on. The UN is also responsible for the ghettoization of the UNPO: the Unrepresented Nations and Peoples Organisation, an organisation of some 40 peoples who are fighting for recognition of self-determination but are not represented by the UN.

on the other about their undeniable autocratization and invalidation of their rule of law? Or will there be a serious conflict between Germany and France, and other Member States, over the construction of the Russian North Stream 2 pipeline to supply Germany with gas? That pipeline is already thirty kilometers from the German border. France wants Germany to stop as a sanction against Russia in connection with the way they are dealing with Navalny. For the time being, Germany refuses to stop the project. We shall see[77].

We will now follow Piepers' reasoning in declaring that we are in the critical phase of a new global systemic crisis. Then we apply that reasoning to the findings regarding the European system of states.

2.23.2 The construction of the critical phase between 1945 and 2020

History showed two dissipative structures. One from 1480 to 1945 - concentrated on the interaction between the European state system and its environment - and a second from 1945 to 2020: now global. Within this, the EU state system is partly responsible for the construction of the new - now global - war cycle from 1945 onwards.

Despite the difference in scale, both dissipative structures share the same factor driving entropic disorder: increasing rivalry between states. The current dissipative structure is driven by populist nationalism, contradictory ideologies, terrorism, trade wars, climate denials, immigration resistance, refugee crisis, cybercrime, decline of some superpowers (UK, France, Russia), the emergence, c.q. aspirations, of new ones (India, Iran, Saudi Arabia, North Korea), the inability of the UN to solve regional wars, occupations, oppression and exploitation of peoples with the tools of peacemaking, peacebuilding and peacekeeping, the Covid-19 pandemic, empowerment of societies through social media with risks for traditional authority structures, secession movements within member states (Scotland, Catalonia), renationalization and regionalization, in short, all factors that tear the social fabric within individual states but also within state systems. Piepers discusses this intensification of rivalries between superpowers in detail by looking at the increasing dysfunctionality of the United Nations, disintegration, and fragmentation, especially within the European Union[78], radicalization and

[77] The fact that even small triggers can lead to big upheavals can be seen in the book The Tipping Point, How Little Things Can Make a Big Difference, van Malcolm Gladwell, Little, Brown, and Company, 2000.

[78] He points, among other things, to the nation-state character of the Union: Member States withdraw from the treaty when they put their own interests first. A new structure with an optimal form of governance has not yet been found. The complexity of governance within the current EU lies on a supralinear scale. So, it grows super exponentially. And that, according to Piepers, is a big problem until an optimal structure is found. That can only be a federal state form.

terrorism, consequences of climate change, population growth and Brexit. Regarding the dysfunctionality of the United Nations, Piepers is mercilessly clear (p. 217).

> "The problem is that the United Nations, like all international orders, was created and organised to maintain the status quo, not to change it. Any adjustment, however meaningful, to the power status and interests of any of the five permanent members, can easily be blocked by them. As a result, the international order, the United Nations, becomes part of the problem at a certain point and itself contributes to the build-up of tensions in the final phase of the international order."

This quote applies in full to the dysfunctionality of the European Union. The right of veto of the 27 members of the European Council prevents any attempt to create a European system of states of a higher quality than the current one. Such as a federal Europe. Not because it would affect their national interests, but because, through conceptual ignorance[79], they think/assume/believe that federalising the European Union would not be better than the intergovernmental EU. They do not know that a federation does not restrict their sovereignty but offers them extras.

For the role of Europe in the construction of the current critical phase, 1989 is important. With the fall of the Berlin Wall and with it the end of the Cold War between Russia and America, these two superpowers were no longer the leaders in the geopolitical field of forces. They made room for the rise of other superpowers, notably China, which claimed a place at the global level. Russia continued to play a role at a global level, but in addition started to manifest itself more and more with (threats of) violence on the eastern border of the European Union (Georgia, Ukraine, Baltic States) and - commercially - with trade agreements including the supply of gas to the EU.

A quote from David Marquand is appropriate here:

> "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

[79] This conceptual ignorance is fed and maintained by pro-European institutions and companies that are partly dependent on EU subsidies for their survival, as well as by academics who have no interest in analysing with clear analyses the dysfunctionality of the intergovernmental EU versus the functionality of a federal Europe, and by federalist groups such as the Spinelli Group and the Union of European Federalists who continue to proclaim that repeated adjustments to the intergovernmental treaty will automatically produce a federal constitution.

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?"

From 1989 onwards, the EU came under increasing pressure. Externally, global
global developments began to exert a centrifugal force on Europe that the EU structures and procedures proved unable to withstand. Why not? Because the EU is not a superpower. Furthermore, the European system of states is not yet at the right - federal - level, which means that the EU is still a nation-state construction. When member states are under pressure, they fall back on themselves because there is no transnational operating body to assist them. For example, there is no European response to the Covid-19 pandemic.

The growing pressure is internal because of the tensions of the dysfunctional intergovernmental operating system. It is external because of global developments and geopolitical shifts over which the EU has no influence. The EU is powerless to deal with Russia's threats on its eastern border other than by stationing additional NATO troops in those regions in the absence of its own European defence force.

The advent of a systemic crisis is heralded by the decline in the average size of non-systemic wars/crises[80]. The phases between these non-system wars/crises become shorter and shorter. At a certain moment the phase between one and the next is so short that the entropic disorder can no longer be regulated, and the necessary new equilibrium can only be achieved with the meta-negative feedback of a system crisis. Based on the calculations of his model, Piepers concludes that the current cycle of the global system of states has now reached the critical phase - i.e., in 2020, plus or minus two years. And that this global system crisis is thus imminent. Since the 'minus two years' have now passed, we must expect the crisis to break out in the 'plus two years' from 2020.

We do not consider Piepers' descriptions of the way in which the global level shows where and how this decrease in the average size of non-systemic wars takes

[80] Non-systemic wars are necessary to regulate tensions during a relatively stable period. But at the same time, they build up new tensions which, over time, can no longer be regulated by non-systemic warfare. As a result, the effectiveness of non-system wars decreases and tension builds up, which pushes the state system into a critical state and then a system war takes place. With a new state system.

place as an indication of the arrival of the critical phase as a precursor to the systemic crisis. We focus on the way the European state system developed to see where this fits into Piepers' global description.

Looking again at the drawings of the developments within the European state system between 1945 and 2020, it is striking that between 1951 (the start of the new European state system, based on treaties) and 2020, two tipping points occurred, with the second occurring considerably faster than the first:

- After hopelessly fiddling with treaties from 1951 onwards, people realised that things could not go on like this any longer, and in 2001, with the Convention on the Future of the European Union 2001-2003, they wanted to try to return to the straight line of federal state organisation 1945-2020.

- But, because that Convention was disrupted, partly by an amateurish organisation, partly by a lack of knowledge about federal state formation and partly by the preponderance of intergovernmental interests, it was finally decided to opt for an enhanced form of intergovernmentalism, only to find out after only 20 years in 2020 that this had been the wrong choice after all. Hence the proposed, but because of the Covid-19 pandemic still postponed, Conference on the Future of Europe 2020-2022. This Conference, as explained before, no longer has any federalist aspect to it and is completely focused on strengthening the current intergovernmental form of government. If this conference is actually held in 2021, it will be swept away into the critical phase in which the European Union will be faced with a systemic crisis that will turn everything upside down.

A quote from Piepers (p. 232):

> "The combination of chaotic war dynamics, the force that the second dissipative structure is exerting on the global state system (towards a global equilibrium state), the half-hearted transfer of powers from states to the European Union and the fact that the global international order (United Nations) is now functioning in an increasingly bad way, make Europe very vulnerable to disintegration and renationalization. You can see this happening now."

Thus, anno 2021, the global state system is charging towards a systemic crisis. A process of self-destruction as a precondition for the emergence of a new order. Global as well as European. But for continuity of life, a capacity, a structure, must step into the vacuum. And that can only be a federal one. During the probably administrative vacuum during the foreseeable meta-systemic crisis a return to warring nation-state anarchy may be inevitable temporarily, but eventually an

order of a higher order than the present state system - global and European - will take shape.

2.23.3 The dating of the coming systemic crisis

Based on his calculations, Piepers argues that the global state system will reach another critical phase in 2020 - plus or minus two years. That phase - given his model calculations - will last about seventeen years. So, until 2037. Within those seventeen years, the next systemic crisis will occur. The seventeen years are the search time to find a new international and European balance in the form of a new global and European system of states.

Piepers explains the length of this period not only on the basis of all data concerning the four system wars from 1480 to 1945, but also on the basis of the fact that the current global (and also European) system of states is highly fragmented and therefore unstable at all levels of its organisation. Furthermore, it is not only states and their armies that are now involved in destabilization, but also population groups around the world that are organising uprisings and demonstrations, whether via the Internet or not, and the spreading of disinformation by organs of governments in order to influence the behaviour of peoples elsewhere. The expectation is justified that the global state system will destabilize even faster as the implosion of the European Union draws nearer.

Piepers sees an unstable zone where clusters or networks are not only highly intertwined with superpowers, but also geographically linked (p. 269):

> "That zone runs from the Baltic States via Belarus, Ukraine and Crimea, via Turkey, Syria, Iraq, Israel, Saudi Arabia and Yemen, to Afghanistan, Pakistan, India and China, the South China Sea and Taiwan to North Korea. There are all sorts of clusters in that zone that often overlap for the superpowers and their allies involved."

A titanic struggle between the United States and China is likely to be the main theme of the upcoming systemic crisis between 2020 and 2037. With multiple war and crises zones, areas where real armies are actually at war. For example, in the South China Sea, in the East China Sea and Japan Sea, in the Middle East (rivalry between Iran and Saudi Arabia, between Israel and neighbouring states), and in Eastern Europe, the border area between Russia and the European NATO allies. Within this violence of crisis, the European Union will disintegrate in search of a new state system of a different order from the present one.

This begs the question: when will this new federal European state system be in place? The answer is: in 2035. Piepers himself does not give a concrete year for the arrival of the new global and European system of states after the coming systemic

crisis. But we dare to do so for the European system of states. In the form of a calculated guess. The reasoning is as follows:

- Assuming that Piepers' model correctly indicates that a systemic crisis will occur within the critical phase from 2020 to 2037.

- That the fact that already twenty years after the Convention on the Future of the European Union another Conference on the Future of Europe is needed, indicates the realization that the current operating system and organisation of the EU no longer provide sufficient energy for maintenance and renewal and that the EU is in an identity crisis, waiting to implode,

- That all the ingredients for that systemic crisis are already in place[81]. The only thing missing is a trigger. That is to be expected before the end of 2022.

Possible triggers are:

- Does Putin dare to test the strength of the new US President Biden by claiming or maybe even occupying a piece of the Baltic States in Eastern Europe[82] ? The same goes for Iran and North Korea. Are they going to challenge Biden to see how far he dares to go?

- Will Israel - overconfident because of its newfound alliance with a number of Arab countries - force the Palestinian people into acts of desperation[83], causing them to fire just one missile too many from Gaza? Or will Israel resist the decision of the International Court of Justice in The Hague that the Court has jurisdiction over the conflict between Israel and Palestine to such an extent that another Intifada will break out that the EU can no longer look away and will have to intervene?

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[81] According to Huub Modderkolk, the war is already underway: 'It is war, but nobody sees it'. Podium Publishing 2020. Modderkolk approaches this subject from the invisible digital world which, with ever more refined technologies, controls and directs more and more people's information.

[82] Putin is capable of the same manoeuvre that Hitler successfully carried out in 1938. From 1918 to 1938, many Germans lived in the Czechoslovakian region of Sudetenland, a result of the rearrangement of borders under the Treaty of Versailles 1919. Hitler claimed this area back without opposition from England and France. Many Russians live in the Baltic States. The suspicion that Putin wants to annex them back to Russia may now become reality. And what will the EU do then?

[83] See Robert Soeterik, (ed.), De verwoesting van Palestina, (The devastation of Palestine) Stichting Palestina Publicaties, 2008.

- Will Erdogan take advantage of the growing disagreements within the EU to strengthen his grip in Cyprus by occupying the Greek part?

- Will Hong Kong's resistance to China's supremacy lead to armed struggle and interventions by other countries? What about a possible attack by China on Taiwan to strengthen its influence in the south China Sea?

- Will civil war break out in America? For example, if ultra-right forces unite against the Democrat-led federal state?

- Is China's newly launched vision of 2035 so threatening that America panics? And can the USA not live with the trade agreement between China and the European Union?

- Will there be a row between the USA and Europe if the latter continues the internationalization of the euro and perhaps supplants the role of the dollar as an international currency?

- Will the relative calm in Afghanistan and Iraq turn into new violence because of the partial withdrawal of US troops?

- Or is there a reason that lies outside the terrain of the traditional superpowers, as a result of which these superpowers suddenly have to interfere? For example, an accelerated dismantling of the Amazon forest that is necessary for the rest of the world?

Who knows? But one or more fuses in a powder keg so loaded are lit in an instant. Once a trigger for the next systemic crisis is in place, it builds up within weeks, with the interconnectedness of networks, such as the unstable zone, involving one party after another. The Lisbon Treaty will not be able to hold the 27 Member States together. Member States will retreat within their own borders. Great powers will dump their crisis waste in Europe. The EU institutions European Parliament, European Commission and European Council will fall silent. There may be an administrative vacuum around 2023.

That is when the attempts to fill the administrative vacuum begin. It is an uncertain period, because various models for a new European system of states will be competing with each other. Before the model of a federal state is consistently embraced, it will be 2030. Then, within five years, i.e., no later than 2035, federal Europe will be launched.

2.24 The options for the European system of states after the crisis

How will the administrative vacuum be filled during the crisis? There are the following options.

2.24.1 The rise and fall of one or more autocrats

The first persons to attempt to fill the administrative vacuum during the crisis are the potential autocrats. The path of strong men promising to bring order is always paved by prior bad governance. Taking advantage of this is in the blood of every leader. By nature, they always strive for more power. Administrators (not representatives of the people) are oligarchs by nature. Anyone who is not stopped in time by a solid system of checks and balances crosses the boundaries of the democratic order and declares himself the boss. Knowing that he can always count on support from part of the people by presenting them with an imaginary enemy.

Europe should have no illusions. That strong man – or men - will emerge one way or another. Who it will be we do not know. We do know how long they will be an autocrat: very short. The systemic crisis will be global. Not limited to the territory of Europe. All over the world, people will be looking for a renewal of state systems which, by virtue of their evolution, will be federal in character. In Europe too. In that process we will put an end to temporary autocrats.

2.24.2 Back to the sovereign Westphalian nation-state

Another model is to return to the Westphalian nation-state. However, this is an outdated and backward form of sovereignty:

- Each state on its own. Closed borders. Immigrants encounter a Fortress Europe.
- Anarchy between those nation states returns. Anarchy in the sense of the absence of transnational governance to ensure common interests and thus resolve conflicts and avoid wars.
- There will be series of inevitable wars like those of the 19th and 20th centuries.
- Diversity and innovation shrink, including shrinkage of national economies due to protectionism and isolationism.

2.24.3 The EU will be re-aligned to treaties

Of course, one option for the intergovernmentalists who emerge from the crisis unscathed is to return European governance to the basis of one or more treaties. That too is not likely:

- Continued intergovernmental governance destroys member state sovereignty with forced assimilation of member states. There will be more exits.
- Even less respect for, or acceptance of, treaty obligations and additional agreements.

- Vulnerability to external threats such as geopolitical shifts, trade wars, economic crises, health crises, terrorism, climate change, new viruses.
- No common policies on cross-border common interests and concerns: economy, social security, immigration, health, work, security, energy/climate, defence, foreign policy.
- No player on the world stage like the USA, China and Russia.

2.24.4 Towards a United States of Europe based on a federal constitution

The only option that fits within the scientific framework is a new European state system of a higher quality than what the European Union currently offers: The United States of Europe, based on a federal constitution:

- Vertical separation of powers whereby member states share their sovereignty with a federal body.
- Each member state retains its sovereignty, constitutional system, identity, culture, language.
- No forced assimilation. No more exits.
- Transnational governance to ensure common interests and concerns.
- No Fortress Europe, open borders, humane approach to immigrants and no military-industrial complex on the external borders of the federation of Europe.
- Diversity, innovation, security, prosperity.
- Stronger than USA, Russia, and China.

This may be the place for a quote from Michel Barnier, former European Commissioner and EU-Brexit negotiator, in the Flemish newspaper De Tijd, August 4th, 2012:

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

2.25 From striving for a federal Europe to opting for intergovernmentalism, to losing energy, to losing identity, to predictable collapse

So, the process worked as follows.

- In 1945, it began with a clearly recognizable aspiration to a federal Europe.
- But in 1951, this aspiration was given an intergovernmental basis.
- This led to an organisation without a legally and organizationally recognizable identity.
- That is why it was given the name '*sui generis*', a magic formula to avoid questions that cannot be answered.

- Problems, tensions, and conflicts that arose as a result had to be solved continuously.
- This absorbed more and more energy, as a result of which, fifty years later, in 2001, a drastic 'solution' was needed: back to a federal model.
- The Convention on the future of the European Union in 2001-2003 was intended to achieve this.
- Because that Convention did not understand the standards of federal statehood, nor the way in which such a convention should be organised, everything to do with federalism was after 2003 eliminated from the outcome of that Convention.
- In 2007, the end result of the 2001-2003 Convention turned out to be the Lisbon Treaty, exactly the opposite of the Convention's goal and task: 100% intergovernmental, 0% federal.
- After this Treaty came into force in 2009, the problems increased, and the interim solutions worked less and less. Signs of an increasing loss of energy and of a growing identity crisis.
- After only ten years, in 2019, this led to the decision to organise a new conference in 2020, the Conference on the Future of Europe. This has been postponed due to the corona crisis.
- This 2020 conference does not have a federal Europe as an objective. Its intention is to maximize the pursuit of a continuation of the EU's intergovernmental operating system by trying to unite counties through operating with treaties. See Annex 2 for one of the examples how that works in practice.
- And that will lead the downfall of the European Union.

2.26 Conclusion

Europe has three periods of governmental anarchy.

Until 1648, Europe had a huge nobility-anarchy. For centuries the nobles fought with each other because there was no transnational administration to prevent or resolve conflicts.

With the Peace of Westphalia in 1648, nation states were created. However, due to the absence of a transnational body to prevent or resolve conflicts the tensions, conflicts and resulting wars did not stop. Up to and including WWII, this was the period of nation-state anarchy.

After 1945, a new system of states emerged, now with the character of intergovernmental cooperation: the EU and the UN. But that led to a new anarchy: the treaty-based anarchy. Member States of the EU and the UN simply do what they want. The adage 'pacta servanda sund' (treaties must be respected) is violated

as soon as a Member State feels threatened within that intergovernmental operating system. Because of the hierarchical top-down character of the EU, the principle of subsidiarity does not work. It cannot remove this actual or perceived threat. Under Article 352 of the Lisbon Treaty, the EU is entitled to take, by means of binding directives, any decision that it deems to be in the interest of the EU.

It is an illusion to think that individual states are willing and able to give up their evident need for individuality. They will always need their own sovereignty, autonomy, self-government, and cultural identity. But they also (should) know that there are common interests that they cannot look after themselves. Just as citizens create a government that will take care of the citizens' common interests, so states must create a government to look after their common interests. Well, only federal statehood is suitable for this. It is not hierarchical and only looks after the common interests of the member states.

In a federal state - if built according to standards of federal statehood - a federal body takes care of the whole, member states do not lose sovereignty and potential tensions and conflicts between member states - traditional causes of nation-state anarchy - are eliminated.

This will be further explained in Chapter 4.

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3. SYSTEM ERRORS OF THE EUROPEAN UNION

In Chapter 2, some of the European Union's system errors have already been mentioned. Chapter 3 discusses them one by one. If one accepts systems theory as a correct scientific approach to the inevitable collapse of the intergovernmental EU system of states, then a systematized treatment of its most important systemic errors cannot be missed.

3.1 The Schuman Declaration of 9 May 1950: the mother of all EU system errors

We reiterate the three crucial sentences from the Schuman Declaration quoted earlier in 2.18:

> "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 these regions which have long been devoted to the manufacture of munitions of war, of which they have been the most constant victims."
>
> "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 **United States of Europe** indispensable to the preservation of peace."
>
> "The essential principles and undertakings defined above will be the subject of **a treaty signed between the States** and submitted for the ratification of their parliaments."

The history of the emergence of federalism - from the Political Method of Johannes Althusius (1603), based on the concept of popular sovereignty of ancient philosophers - shows an indissoluble link between the people and their federal statehood. Thoughts of those philosophers were enshrined in binding law by the Philadelphia Convention of 1787, under the adage 'All sovereignty rests with the people'. The Convention was only prepared to accept that the people could have some form of representation:

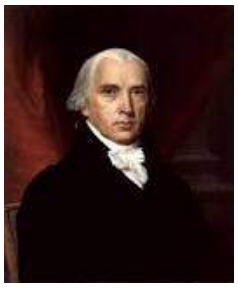
(a) if that representation had no top-down hierarchical powers,
(b) if those powers were limited and intended only to promote the interests of the whole, and not the interests of the members of that whole,
(c) if all the powers that the people and the member states would not entrust to the federal body would remain with the people and the member states,
(d) if a clear assignment of powers to three branches were established: the trias politica,

(e) if a system of checks and balances kept the three branches apart so that none of the three could acquire supremacy,
(f) if the legislature were dedicated to legislating,
(g) if the executive were dedicated to executing, and
(h) if the judiciary were able to judge independently.

On point (h), it is appropriate to mention a remark by Alexander Hamilton in Federalist Paper No. 78: "There is no liberty if the power of judging be not separated from the legislative and executive powers." But in order to avoid that the judge always has the last word, the legislature will answer judicial rulings that fall badly with new rules that again create a new balance: an example of negative feedback as explained in Chapter 2.

The drafters of the Federal Constitution were driven not only by the desire to build in checks and balances so that no one could destroy the bloodily fights for freedom, but also by the hope and expectation that this very limited constitutional and institutional system would bring prosperity and well-being. So, in addition to a defensive agenda of building a bastion against possible new domination, they also had a positive one: a Constitution that would create political, social, and economic progress as a matter of course. The federalists thus saw in this compact Constitution the best instrument for preserving their hard-won independence, on the one hand, and growing national strength and progress, on the other.

The requirements (a) to (h) could only be met by a Constitution. A treaty, as Schuman stated, cannot do that. The Schuman Declaration is therefore the mother of all subsequent systemic errors. Schuman is to blame for this. It is true that between 1945 and 1950, the pressure to federalize Europe by means of a treaty increased (see Chapter 2), but it could not have escaped his notice that immediately after the end of WWII, Spinelli and many other well-thinking people made it clear that a federation needs a Constitution. And why this is so. The question also arises as to why Jean Monnet - Schuman's adviser - did not prevent the latter from making this serious systemic mistake. Monnet must have known from his working with President Roosevelt that a Constitution was needed for a federal state.



Chapter 4 contains additional arguments by James Madison, one of the authors of the American Federalist Papers (1787-1788). He rejects with a merciless argument the Treaty under the name of the 'Articles of Confederation' and explains why a federal constitution must replace it. See Chapter 4.

3.2 The European Union directs the member states as a centralized unitary state

The interests of a state should as far as possible be looked after by the state itself. Decisions should be taken at the lowest possible level; as close to the citizen as possible. To this end, states have their own governments. They can regulate what they themselves can regulate best for their citizens.

In the EU, this notion has been laid down in so many words in Article 5 of the Treaty on the EU: the principle of subsidiarity. This means that the EU is there for interests that cannot, or cannot well, be looked after by the states themselves. It is there to represent the interests of Europe, that is, the interests of the aggregate of the participating countries. In the context of that subsidiarity, the principles of proportionality and necessity act as additional incentives for the EU not to go beyond what is necessary to achieve the goals of the EU intergovernmental system.

The reality, however, is different.

Although the Treaty of Lisbon speaks of European interests - for example, in the four freedoms[84] - in practice, decision-making is guided by the interests of the Member States. The action of the European Union is not primarily aimed at regulating European affairs, i.e., matters that are beyond the reach of the Member States as common interests, but primarily at making changes - with directives - within the legal systems of the Member States. In other words, the EU interprets its task of looking after 'The European Interest' as a task to assimilate the Member States, under the adage of 'European Integration'. In practice, integration works, as will be explained in 3.4 like assimilation. This meets with resistance from Member States. The United Kingdom has drawn consequences from this with Brexit, although it should have chosen a federal position on the basis of its own history of a century and a half of striving for a federal Europe. See Chapters 2 and 4.

To achieve the EU's goals, the final decision lies with the European Council, the group of twenty-seven Heads of Government and State that decides by unanimity. This principle of unanimous voting works like a veto system. A member of the European Council who does not agree with a proposed decision is threatening it with a veto. That is why there is constant negotiation in the sense of an exchange of interests: 'If you support me with this proposal, then I support you with your proposal'. The EU has no more common ground.

[84] These are the free movement of people, goods, services, and capital.

From the mother of all EU systemic failures follows the behaviour of the European Union which, with the administrative dominance of the European Council:
(a) governs the Member States as a centralized unitary state, without considering the autonomy and cultural identity of the individual Member States,
(b) with top-down directives (hierarchy), without democratic accountability,
(c) with disregard for the limitative system of competences and
(d) with disregard for the principle of subsidiarity which says that the EU must leave to the Member States what they can best do themselves.

Things that go wrong in the EU are not incidents but self-evident consequences of a wrong operating system.

While the Lisbon Treaty does contain a limitative list of EU competences, and thus also the principle of subsidiarity (including proportionality and necessity), Article 352 of the Treaty gives the European Council the power to take any decision it deems necessary to further the objectives of the Union. In so doing, the Council can cut across the principles of subsidiarity, proportionality, and necessity. That is the image of a centralized unitary state. Only if a member of the European Council exercises a veto can such decision-making be stopped. This is an extremely primitive way of making decisions, which also takes place in the United Nations Security Council.

In parts, the European Parliament, and those of the Member States, have powers to counteract, but the whole system is concentrated around the final authority of the European Council, which is (a) applied top-down in a centralist manner, (b) where it is not matters of European interest that are the criterion, but Member State interests that determine what the European interest is. As a result, the EU is nothing more than an accumulation of national interests. The leaders of the Member States do not experience Europe as their property.

3.3 The European Union mocks the principles of democracy

The European Parliament is not directly elected by the people of the Member States but through elections for each Member State. Although political groups have formed factions[85] within that Parliament according to their political values, and not according to their nationalities, it is a form of indirect election. Voters must vote for a candidate from their own country. A German citizen cannot vote for a Spanish candidate. Only when transnational political parties are allowed to create

[85] There are currently eight groups in the 705-member Europarliament: European Peoples Party (187), Progressive Alliance of Socialists and Democrats (145), Renew Europe (96), Greens/European Free Alliance (73), Identity and Democracy Group (75), European Conservatives and Reformists (62), Left Group (39), and a not-registered group (27).

transnational electoral lists does the electoral basis correspond more to the way a constitution should be ratified: of, by and for the people.

The European Council is not democratically elected. It therefore has no mandate from the people. That is where the following matters go wrong.

3.3.1 European Council: final decision-making but no accountability
The power of the EU is in the European Council. Accountability for the use of that power only occurs when the Council considers it useful and necessary. Although Parliament can call the European Council to order on certain points, the Council still draws the longest straw when too little power has to be compensated for by political power play. In the European Union, the administrative element - the European Council and the European Commission - is dominant. Not the institution that represents the people of Europe, the European Parliament.

3.3.2 European Council: dual mandate
The members of the European Council already have a job. They are either leaders of governments or heads of state. With their place in the European Council, they violate an important principle of orderly organisation: you cannot have two functions at the same time within the same system, and certainly not if you are both boss (member of the European Council) and servant (Head of Government or State). Dual mandates in the sense of 'incompatibilité des fonctions' are a curse.

3.3.3 European Council: unanimity in decision-making
The members of the European Council take the most important decisions by unanimity. This form of decision-making is based on fear. It is a poor incentive to be responsible for common European interests. It is the motive for taking decisions based on national, regional, and private interests. If a particular issue threatens to damage the national, regional, or private interest of one of the members, this member can use a veto to block the decision-making process. This creates an exchange of interests in the back rooms. This type of decision-making is one of the most powerful causes of the fact that the European Union is merely an accumulation of national interests. The whole is no more than the sum of its parts.

One can only understand this insistence on decisions based on unanimity if one understands that, since 1950, the intergovernmental operating system has not yet developed any deep sense of what common European interests might be, over and above national interests.

3.3.4 European Council: oligarchization
The EU is a characteristic example of Jean-Jacques Rousseau's view that even in a system that is supposed to be democratic, there is always a tendency towards

oligarchization. In the EU, the European Council of 27 members is that oligarchy. Within the Council itself, the oligarchization continues. Germany and France are in charge there, although that may change when Angela Merkel steps down as Chancellor later this year. There is also a Macron-Rutte oligarchic 'tandem'. Both seek to abolish unanimous decision-making in the Council. Not because they understand that this form of decision-making is backward, but because - given their position in the Council - they would gain more personal power. They justify this desire to abolish unanimity by pointing to the importance of the EU being able to quickly decide on sanctions against countries outside the EU if they misbehave in the eyes of the Council. Strictly speaking, however, this is a classic feature of intergovernmentalism[86], whereby those in power are led by their insatiable desire for more powers in the hands of a few, ultimately in the hands of one, the autocrat.

3.3.5 European Commission: no European government

There is no European government that is accountable to a European Parliament. The European Commission, which is seen as a kind of government, is a typical intergovernmental phenomenon with its appointment of Commissioners from each Member State and its character of a civil service.

3.4 Integration is assimilation

It has been said before: the intergovernmental system has developed under the banner of 'European integration'. Few words are as wrong. Through the top-down, hierarchical control of the European as a centralized unitary state, integration is nothing but forced assimilation. A process that leads to the uniformity of the Member States. But assimilative integration may not, must not and need not take place on the level of the Member States. Only at the federal level may one use the word 'integration' in the sense of assimilation. This is the level at which a handful of European interests are promoted. It is at this level that national interests merge, for example, in the form of European defence. In a European Federation there are no German, French, Spanish or Italian armies, and so on, but only one European army.

The misuse of the term 'integration', which has been going on for decades, is in practice leading to increasing resistance from Member States because its assimilating character is threatening their identity. If both the political leaders of the United Kingdom and those of the European Union had known

- that in a federation there is a vertical separation of powers,
- that member states share sovereignty with a federal body and

[86] For an insight into the questions this raises, see Leo Klinkers' article in Europe Today Magazine, Macron and Rutte: intergovernmentalism 2.0: http://www.europe-today.eu/2019/05/03/macron-and-rutte-intergovernmentalism-2-0/.

- that member states do not face a threat of assimilative integration from that federal body,
- it is highly doubtful if there would have been a Brexit.

In a federation, all the member states' own competences remain with the member states, except those which they would like to entrust to a federal body because they can no longer look after some interests themselves and would like to receive something extra, namely that a federal body takes over these concerns from them. This is illustrated in Chapter 5.

3.5 The curse of exceptions to generally binding rules

From the point of view of principles of correct legislation, the Lisbon Treaty is a legal monster. It is so bad that those responsible for that monstrosity have committed an 'administrative capital offence'.

The main principle of correct legislation is simple to understand but difficult to implement. For one must only make generally binding rules. Universally binding rules apply to everyone: to all peoples and institutions in all Member States. That is easy to understand. It is not fair to make a rule that applies to Germany but not to Spain. The difficulty arises when Spain insists that those rules apply to other Member States but not to Spain. So, what do we do? Then there are only two possibilities. Either Spain leaves the Union, or the European legislator grants Spain an exception. An opt-out. The latter is the mistake of all mistakes when legislating. The Lisbon Treaty not only has conflicting rules (that is, conflicting articles despite the desire to consolidate treaties), but also a large number of opt-outs and protocols that indicate that the Treaty does not apply to everyone on an equal footing. If we do not want this kind of legislative mess, the only solution is to have very few rules. The less one regulates, the easier it is to achieve the goal of having them apply to all. Only when one understands this principle can one understand the resounding success of the Federal Constitution of America, which consists of seven articles, strengthened in later years by twenty-seven amendments. The first ten were added as appendices to the Constitution in the form of the Bill of Rights. The other seventeen amendments were incorporated into the text of the seven articles. Chapter 8 provides more information on them.

Chapter 6 of this Toolkit contains our draft European federal constitution. Because we stick to the basic principle of correct lawmaking - all articles apply to everyone, no exceptions, no opt-outs allowed - it has only ten articles. Three more than the American one, because we have modelled ours on European standards, learned from the twenty-seven Amendments, made some articles better readable, and put in some elements from the Swiss Federal Constitution. Chapter 7 contains the outline of a European Citizens' Convention with the task of improving our draft

federal constitution if possible, but with an explicit prohibition on adding additional articles.

3.6 The arrogance of not complying with treaties

Working with many exceptions to generally binding rules has another unpleasant effect. Because Member States see the Lisbon Treaty as an instrument designed to safeguard their own national interests, there is also an air of "If we don't get our way, we'll ignore the Treaty anyway. Who can touch us?"

Member States that do not wish to comply with jointly made decisions - see, for example, the refusal to accept migrants - shrug their shoulders when 'Brussels' threatens sanctions. The same applies when member states adjust their own constitutional law in an autocratic way. Take Poland and Hungary, for example. Indeed, in early December 2020, they vetoed the EU's multi-annual budget and the hard-won Recovery Fund of €750 billion if the European Council went ahead with the plan to cut subsidies to both countries if they did not want to comply with the principles of the rule of law in their own countries. The principle of 'pacta servanda sunt' (treaties should be respected) has no value in the EU. And that is one of the many symptoms of a disintegrating European Union.

The former President of the European Commission, Jose Manuel Barroso, put this deviation from normality at the level of the European Council as follows:

"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."

3.7 'The EU is also a bit federalist, is it not?'

Over the years, federalist criticism of the intergovernmental nature of the EU has often been countered with statements that the European Union really does have a bit federalist characteristics. That is nonsense. The most important standard feature of a federation is the presence of a federal constitution. Which is absent in the EU system. There is no such thing as 'a bit federalism'. It is either a federation or it is not. Just like you cannot be a little bit pregnant. You either are or you are not. See in the footnote the link to a short video[87] explaining this.

[87] Fed. Pill n.1 : https://www.youtube.com/watch?v=TVrF5ry0wvk

3.8 No Fiscal Union yet

In order to help EU Member States in financial difficulties with financial injections, conflicts regularly arise. Rich Member States protest against having to alleviate the poverty[88] and financial deficits of the South and demand that they put their own house in order. The southern ones protest because they are then manoeuvred into a financial stranglehold.

With every economic crisis in Europe, the question arises whether the Eurozone with its Economic Monetary Union should not be replaced by a Fiscal Union like the one in the United States[89]. However, the advent of such a Fiscal Union is being blocked by sticking to the EU's intergovernmental operating system. In response to a statement by Jean-Claude Juncker "I am strictly against a European superstate. We are not the United States of America," writes Ferdinandino Giugliano[90]:

> "The question is not what level of integration Europe intends to reach, but how much cohesion is needed to support the existing institutional framework, including monetary union. The risk is that the eurozone remains a half-way house, vulnerable to a repeat of the sovereign debt crisis which took place at the start of this decade."

Giugliano is clear. To thrive, the Eurozone needs a common budget to assist countries in economic difficulties. The intergovernmental operating system with its Economic Monetary Union (EMU) cannot do that. It is not a good instrument for managing the financial relationships between the member states. The Fiscal Union in the United States is a system that, on the one hand, levies taxes and, on the other hand, transfers those tax revenues back to the states according to the extent to which those states need financial help. It is a 'tax and spend system' that helps weak states, and states in economic decline, without placing unnecessary burdens on other states as is the case within the EU.

The EU's financial construction also met with criticism abroad. In 4.2 we mention that Robert A. Levine wrote an article in The New York Times of 9 January 1999 entitled 'What the EU needs is a copy of 'The Federalist Papers'[91]. He put forward

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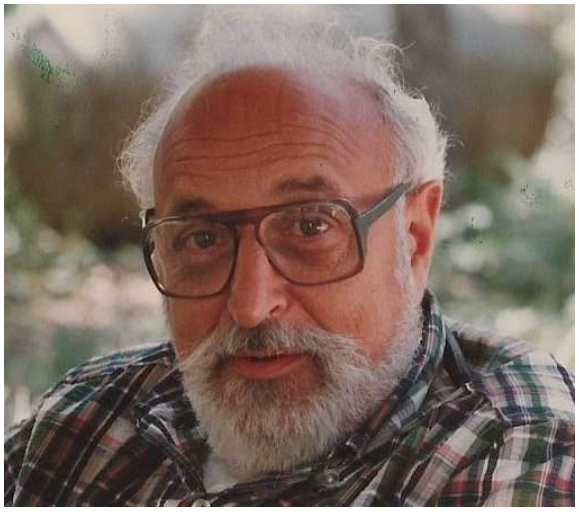
[88] There are large differences in the level of unemployment within the European Union. In southern Member States it can sometimes reach 25%, while some northern Member States score around 5 to 7%.

[89] Friedman Gerald, 'An American Model for Europe? Tax Policy and Federalism in the United States', Open Edition, Vol. XIII-No 2, 2015.

[90] Giugliano Ferdinandino in 'What the Eurozone Can Learn From the US', Bloomberg Opinion, 16 February 2018.

[91] Robert A. Levine, 'What the EU needs is a copy of 'The Federalist Papers' in: The New York Times, 9 January 1999: https://www.nytimes.com/1999/01/09/opinion/IHT-what-the-eu-needs-is-a-copy-of-the-federalist-papers.html.

this thesis at the start of Economic and Monetary Union and explained that Europe could learn some useful lessons from America in this pursuit of full economic integration. The most important lesson being: without a federal foundation, sooner or later this Economic and Monetary Union will go wrong.



In the context of the 2008 global banking crisis the question arose: '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.

Why? In the United States, the tax revenue of the federal body averages 17% of GDP. This compares favourably with the EU's average of 1% of GDP. The size of the federal budget makes it possible in the US to intervene with large financial amounts when serious financial problems arise[92]. For example, during the Covid-19 pandemic.

The US tax system is progressive in the sense that states with average high incomes pay a higher percentage of taxes to the federation than states with relatively poor populations. For example. Before the banking and economic crisis hit in 2008, Connecticut residents paid $13,000 per capita to the federal government, while in Mississippi it was only $3,000. The national average was $7,500.

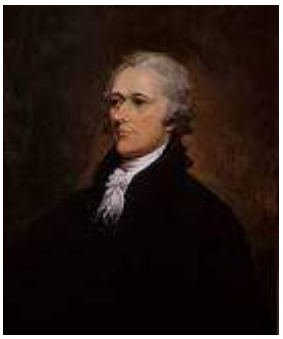
That progressive tax character also plays out in reverse in this Fiscal Union: that is, when the federal government has to step in to alleviate a state's need. In the example just cited, Mississippi received financial assistance from the federal government in the amount of 9,000 per capita, compared to 7,500 as the national average. Since Mississippi has a per capita income of $27,000, the transfer from the federation to Mississippi represents 22% of that income per year.

[92] Feyer James & Sacerdote Bruce, 'The US may show the EU the way forward on fiscal integration', LSE, August 26th, 2013.

In the EU, the figure is significantly lower. In 2009, Poland, Hungary, Greece, and Portugal received net transfers of less than 400 dollars per capita. These amounts are higher in 2021, but they cannot hide the fact that the EMU system is not nearly as balanced and humane as the Fiscal Union in the United States. That system absorbs a fall in states' GDP due to economic conditions of that progressive nature: for every dollar that a state's GDP level falls, the federal tax rate is reduced by 55 cents. In the EU, a fall of one euro in GDP leads to a reduction in the tax rate of one cent.

The EU has a system that obliges Member States to impose limits on the granting of state aid to their own weak economies. This limit differs per Member State. During the corona crisis this was an obstacle for several member states to keep their economies alive. With a Fiscal Union this problem would not exist.

A Fiscal Union on the other hand acts as a shock absorber when states have problems with their GDP, causing unemployment to fall, among other things. The intergovernmental EU has no such shock absorber. The Eurozone countries (see Annex 2) cannot react properly if - as happened at the time with Greece - they experience a financial crisis that is worse than in other member states. They have the disadvantage that they cannot devalue their currency to absorb such shocks. Unlike in the US, they also cannot absorb the shocks themselves by means of a Fiscal Union with large financial transfers.



To understand why and how federal America designed this Fiscal Union we must - as in Chapter 4 - go back to basics. In this case back to Alexander Hamilton[93]. As one of the authors of the Federalist Papers (1787-1788), he was primarily concerned in a number of Papers with the question of how the federal state could become financially and economically strong. This question was answered by two measures.

Firstly. He ensured that the Convention of Philadelphia (1787) laid down in its draft federal constitution that the debts of states that joined the federation by ratifying the constitution would be taken over by the federation. Those states thus began the federal adventure debt free.

Secondly. As the federation's first Finance Minister, he designed a system of taxes and levies that soon provided that well-stocked state coffers. So, the federation

[93] Henning Randall & Kessler Martin, 'Lessons for Europe's fiscal union from US federalism', Vox EU, CEPR, 25 January 2012. And: 'Fiscal Federalism: US History for Architects of Europe's Fiscal Union', Peterson Institute for International Economics, January 2012.

began with a robust fiscal capacity and could thus absorb the debts of states. That was abolished after 1840. Some states then went bankrupt. As a result, all states except Vermont adopted rules in their own constitutions or by legislation under the constitution to balance their budgets themselves from then on. Accumulation of debt within states was thus reduced to a minimum. The criticism by some on a Fiscal Union as an instrument that would stimulate poor states to pursue unwise financial and economic policies does not hold water, because the states themselves prevent the accumulation of debts in their own constitutions and regular legislation.

In our draft federal Constitution for Europe, the tenth and final Article X contains the Clause, as in the American Constitution, that the debts of states joining the United States of Europe are taken over by the federation. That is one of the lessons we are learning from federal America. Furthermore, Article III, Section 1, Clause 1 gives the House of the Citizens of our federal constitution the power to levy federal taxes. With that lesson, the United States of Europe can fill the federal treasury with an average of 17% of GDP in exactly the same way as it did in America. A Fiscal Union designed on that basis is a fiscal instrument for macro-economic stabilization that is lacking in the intergovernmental EU.

3.9 No internationalization of the euro (yet)

The weakness of the Eurozone due to the lack of a Fiscal Union fragments the bond between the EU Member States. This is reinforced by the weak international role of the euro.

The strength of a currency determines the geopolitical significance of a country. This has been the case with America for many years. The dollar is the international currency. That currency is involved in 88% of the world's financial transactions. Worldwide more than half of the reserves that countries have are in dollars. The US uses it as a geopolitical instrument and makes other countries, including the EU, dependent on that dollar. To what extent the rise[94] of crypto-currencies such as BitCoin can become a rival to the dollar is not clear. However, trade wars and trade agreements make it clear that there is a need for competition from the dollar. The trade agreement that the EU recently concluded with China was probably an attempt by the EU to give the euro more international prestige. But the weakness of the EU's intergovernmental operating system means that the euro is certainly not yet a currency in international payments that can compete with the dollar.

[94] Noteworthy is an initiative by the city of Miami to investigate the possibility of civil servants receiving part of their salary in BitCoin. And that citizens pay part of their property tax via BitCoin.

Whether attempts to internationalize the euro - which would enable the EU to acquire a more autonomous geopolitical position - will succeed remains to be seen. As long as the intergovernmental EU is not replaced by a federal Europe, that question must be answered in the negative. The strength of the dollar lies in the system of the federal state. The EU cannot match that. At best, one can speculate whether the USA, considerably weakened by the former President Donald Trump, needs so much energy to carry out fundamental maintenance and renewal at home (see the concept of entropic chaos and decay in Chapter 2) that its strength at the geopolitical level is only marginal. While the USA needs a few years to get back on its feet - politically, economically, socially - the EU could jump into that geopolitical hole by internationalizing the euro, but for now the intergovernmental system will be too big a handicap. Also, because the USA will undoubtedly respond to an attempt to promote the euro as a competitor to the dollar with incomprehension and possibly countermeasures.

In all this, we should not forget that the European and global systemic crisis announced in Chapter 2 may cause a shakeout of currencies. Both the dollar and the euro may go down in that violence if it turns out that cryptocurrencies based on block chain technology are more stable and thus can become - worldwide - the new financial system. So, the rise of cryptocurrencies requires attention from the federal Congress. Attention in the sense of giving them a clear, legitimate place in the financial system of the federation, in the context of the internationalization of the euro.

In addition to the need for the Federal Congress to provide a political answer to the question of the place of cryptocurrencies in the European financial system, the importance of a European Basic Income should also be addressed. During a teleconference on 27 February 2021 (chaired by Javier Giner, member of FAEF's board), under the title 'Universal Basic Income', keynote speaker Ivan Vilibor Sinčić, MEP from Croatia, said among other things: "A Universal Basic Income is not an ideology, but a matter of civilization. Of course, it has to do with social, economic, and fiscal aspects, but primarily it is a sign of civilization. It creates freedom in the sense of liberation from the everyday struggle for survival, it creates new employment, and it opens the way to new insight on arts, science and technology."

Both cryptocurrencies and a universal basic income are not constitutional and institutional matters, but belong to the realm of policy, to be determined by the Representatives and Senators in the Federal Congress.

This seems a good place to clear up a misunderstanding. Some assume that a federal state leads to specific substantive federal policies. For example, in the areas of agriculture, transport, migration, climate, refugees, the Israeli-Palestinian conflict, etc. This is not correct. It is not the federal nature of the United States of Europe, but the political values of the members of Congress that determine the content of policy. So, there is no such thing as 'federal policy', but there is 'policy of the federation'.

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PART B: SYNTHESIS

4. BACK TO THE BASICS

4.1 Introduction

The pursuit of a federal Europe is like a ground fire that has been flaring up ever since 1800. It spreads under the surface like heath and peat fire but surfaces now and then to smoulder invisibly again.

Between 1800 and 1945, for example, the pursuit of a federal Europe regularly flared up, even under the leadership of British federalists. Also, in the Interbellum, the period between WWI and WWII, when France and Germany strove for a federal union. That failed. Partly due to the death of two protagonists and partly due to the rise of Hitler.

From 1945 onwards, Europe has had a large number of federalist movements. However, they were/are all singular organisations, without cooperating under a federal umbrella. So, without a federal organizational level. Thus, without authority or influence in the European political arena. So, without the strength needed to contribute effectively to establishing the United States of Europe. The Federal Alliance of European Federalists (www.faef.eu) offers a federal home to such movements to finally establish, as a united front, a democratic and prosperous federal Europe, more than two centuries after the creation of the American federation.

That requires knowledge. Knowledge of how that first and most successful federation was established. But also, knowledge of the many failures in Europe. Elsewhere in the world there are now twenty-seven federal states (see Annex 1), but Europe has been waiting for more than 200 years to say goodbye to nation-state anarchy with its constant conflicts and violence.

For that knowledge we need to go back to basics. Let us reiterate what we said in Chapter 1: *'Too little was and is realised that those who want to shape the future can find sufficient building blocks in the past to know what works and what does not.'* We find some major building blocks in reviewing four books.

The first one deals with the views of James Madison and Alexander Hamilton - two of the three authors of the eighty-five Federalist Papers - on two actions of the Philadelphia Convention:

- Action 1: what unique innovation in political theory and practice did that Convention bring about?
- Action 2: what audacious steps did that Convention take; audacious in the sense of behaviour that must be characterized as stepping out-of-the-box.

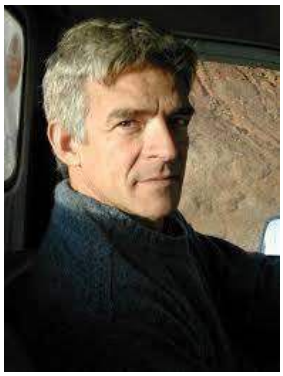
Fundamental thinking on European federalisation dates back to 1600 through the writings of Johannes Althusius. Other European philosophers - such as Rousseau, Montesquieu, and Locke - have continued and improved on that work. The members of the Philadelphia Convention knew those writings. Strictly speaking, therefore, the American Constitution is based on the ideas of European philosophers.

The second book is entitled 'We Europeans' and is written by Wim de Wagt, art historian, university lecturer and writer of books on architecture and Jewish history. De Wagt describes in detail how in the Interbellum period - the period between the two world wars of the 20th century - the need to create a united and unifying Europe by means of federalisation was discussed, written, and deliberated on a very large scale. In order to realise prosperity and security on a broad European scale. Between 1920 and 1940, there was a widespread desire in European society to create sustainable European unity and citizenship by means of constitutional and institutional measures that transcended national borders - as a condition for prosperity and security on a European scale.

Many well-known people, also from outside Europe, participated in this. De Wagt gives them all a place, but concentrates on two figures, the French statesman Aristide Briand, and his German colleague Gustav Stresemann. These two tried to create a form of European, but especially Franco-German, cooperation under a federal heading. In other words, Briand and Stresemann saw their endeavors as a form of federalisation, but strictly speaking - if one takes a closer look at their endeavors against conceptual characteristics of federalisation - they were attempts to cooperate intergovernmentally in the economic field. Cooperation in one or more policy areas on the basis of one or more treaties is the hallmark of intergovernmental governance. It is not federalisation. This does not detract from the valuable descriptions by De Wagt, who describes in detail the rise and fall of this confederal-like endeavour in the interwar period.

The third book is by Andrea Bosco, renowned author on the history of federalism. Like Wim de Wagt, he describes the flare-up of European solidarity in the context of federalism during the interwar period. But he approaches it differently. In his book 'June 1940, Great Britain and the First Attempt to Build a European Union' (2016), he takes space to point out the confederal character of Briand's and Stresemann's strivings, and describes how from the First World War onwards, an almost global wave of federalising strivings arose, driven by - nota bene - Great Britain.

Here is a little insight into Bosco's book. After the First World War, the Treaty of Versailles was so strict on Germany that it laid the groundwork for the Second World War. One of the authors of that treaty - the Englishman Philip Kerr, also known as Lord Lothian - acknowledged this and also understood that the newly founded League of Nations, by its emphasis on 'nations', would not be able to defuse the primary nation-state thinking and acting, which made the advent of another war predictable. Lord Lothian sowed the seeds for thinking in European federalism because only a federation could administratively cover 'the anarchy' of the area between nation states with democratic bodies and thus guarantee European unity.



This last sentence cannot be re-read often enough: in the interwar period, people saw the Westphalian nation-state of 1648, with its frenetic adherence to rigid national borders and absolute national sovereignty, as the most important cause for the absence of unity and thus the predictable re-emergence of war on a global scale. Chapter 2 has been dealing with this awkward phenomenon. The fact that there was no cross-border administration between these sovereign nation states was unabashedly referred to as anarchy. And thus, as the cause of the ever-recurring wars. Anarchy in the sense of the unjustified lack of constitutional and institutional provisions to resolve concerns and interests that European countries shared with each other by means of a shared sovereignty.

This was already the case a hundred years ago. And what do we see now, in the second and third decades of the 21st century? With the success of populist nationalism in several EU Member States, a few autocrats are trying to hijack democratic procedures and, with newly acquired power, kick Europe back into the dark past of nation states fighting each other. Horrified as soon as the necessary federalisation of Europe is mentioned.

A hundred years ago, things were different. The work of Lord Lothian and his followers led to a massive enthusiasm in England for European and even worldwide federalisation, to culminate in a world government. Using archive material, Bosco shows that at the outbreak of the Second World War, Churchill, together with De Gaulle, even offered the French government a federal union of both countries. This failed due to miscommunication at the time when the German troops were about to take Paris. The poignancy of this book is the fact that of all countries, England emerged as the leader in laying the foundations for European federalisation in the interwar period, even attempting a federal alliance with the United States of America.

The fourth book is called ‘De ziekte van Europa’ (The Sickness of Europe, 2015) and is written by Guy Verhofstadt, former Prime Minister of Belgium and now member of the Renew Europe group in the European Parliament.

He concentrates on describing the many diseases from which the European Union suffers, why and how the intergovernmental operating system of the EU is the cause of them and why a federal Europe would not have such diseases. A quote: "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 defence of the European general interest."

It is not cheerful reading. But without a thorough knowledge of this book, there can be no learning process to stop repeating the same mistakes over and over again and, like the Philadelphia Convention, finally to exchange the dysfunctional and undemocratic intergovernmental EU system of governance for a democratic European Federation as an instrument for much-needed European union and citizenship.

The discussion of these books shows:

1. That a widely shared societal aspiration for (a) prosperity and security in Europe through (b) the creation of more connectedness between nations and cross-border governance, (c) to be realised by covering the anarchic area between nation-states with federal law and organisation, flared up very strongly between WWI and WWII, but that such a European Federation has not been realised until now.

2. That slowly but surely it seems to be becoming clear why such a European Federation has not yet been realised and that we have now entered a period of European disintegration, fast on the way to a systemic crisis of the European state-system.

3. That the cause has to do with the fact that four things - as necessary conditions to be fulfilled for the creation of a European Federation - were not present in time at the same time until now.

4. Namely, (a) a very serious crisis forcing politicians to get out of their comfort zone, (b) a widely shared societal desire to base European unity on a solid form of state that continues to guarantee the own identity, sovereignty and

autonomy of each participating country, but still covering that area of anarchy between the member states with shared governance, (c) thorough conceptual knowledge of the constitutional/institutional characteristics of a federation, and of the causes of its failure so far in Europe, (d) political courage to innovate on the basis of that knowledge by means of out-of-the-box measures.

Only when these four elements are present at the same time - as was the case in America at the end of the 18th century - is there sufficient energy to drive the 'rocket of federalisation' through the atmosphere so that it can no longer fall back to earth by gravity.

An example. In 'We Europeans' Wim de Wagt describes:
(a) the presence of a gigantic crisis situation in the Interbellum;
(b) the presence of a very broad social basis to realise European prosperity, security, solidarity, citizenship by means of cross-border federal law and organization;
(c) but insufficient broad political courage to act accordingly;
(d) and also, the absence of the constitutional and organisational knowledge necessary to realise these goals with the only instrument that can make this possible, namely a European Federation.

As far as point (d) is concerned, the small group of politicians who did have political courage in the interwar period lacked sufficient knowledge of the instruments they wanted to use to achieve these transnational goals. They always wanted to use a confederal - intergovernmental - instrument and therefore lacked the right goal-means relationship. There were no people like Hamilton, Madison, and Jay to explain to Europe's citizens and politicians why a confederal form of government is a systemic failure that disintegrates, and that a federal form of government is the only instrument that can guarantee the achievement of those goals.

And so, all their federalisation efforts stalled a few years before the outbreak of the Second World War. Only to continue making the same mistakes after that war, leading to today's disintegrating European Union. The crux of the error is to assume that an intergovernmental operating system can eventually evolve into a federal operating system. That is not possible. It is like thinking that you can turn lead into gold.

In recent years the number of conflicts between EU Member States, and tensions between Member States and Brussels, has increased. There is a permanent crisis situation. Chapter 2 is devoted to this, pointing out the historical development that conflicts eventually erupt into a major crisis and then produce a new state system.

This knowledge should prompt leading politicians in the EU to intervene before the systemic crisis breaks out.

Here is a quote from Larry Siedentop:

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

But the heads of government and state in the European Council are demonstrating once again that they do not have the conceptual knowledge required to swap the EU's disintegrating intergovernmental operating system for a federal one, let alone the courage to do so - under the pressure of rising populism and nationalism.

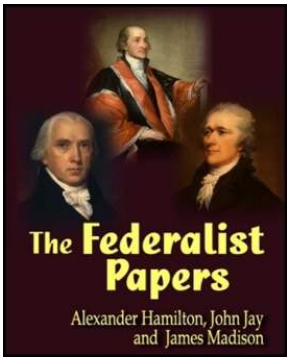
The four books describe serious crisis situations. But only the first book, The Federalist Papers, shows why the crisis in America led to that out-of-the-box renewal in the form of federalisation. Although the other books describe no less penetratingly a crisis situation in Europe - in the Interbellum and after WWII - it does not yet seem so serious that the politicians involved are scratching their heads in order to make drastic changes.

What follows is a discussion of James Madison and Alexander Hamilton's views on two powerful acts of the Philadelphia Convention.

4.2 The Federalist Papers (1787-1788)

4.2.1 Introduction

The Federalist Papers contain fundamentally new insights about the form and content of statehood that does justice to two inalienable rights of a people, namely freedom and happiness. Knowledge of this is desperately needed to combat the calamity of the unmistakably disintegrating European Union. Not by making the umpteenth futile adjustment[95] to the law and structure of the European Union, but by replacing it with a federal form of government. Just as they did in America between 1787 and 1789. The facts and arguments of that time apply convincingly to the dying life cycle of the European Union. Applicable in the sense of: "Learn for once from what those Americans at the end of the 18th century managed to create with



[95] This has been extensively explained in Chapter 2.

the ideas of European philosophers such as Aristotle, Montesquieu, Rousseau and Locke."

Leo Klinkers and Herbert Tombeur already wrote that the European Union will disintegrate in the European Federalist Papers (2012-2013)[96] . This is the inevitable consequence of the systemic error in the Schuman Declaration of May 1950, already discussed in Chapter 3. To avoid misunderstanding, the European Union is a wonderful symbol of the age-old desire for a united Europe. However, its operating system contains all the errors of the great book of errors of state control. It is against this background that the observations on the American Federalist Papers must be understood.

The discussion is limited to topics that are unique in the history of federal state formation. Unique in two respects. On the one hand, because it is new, unprecedented. On the other hand, because of its audacious character, best formulated as: acting out of the box.

For the substantiation of this approach, we refer again to Robert A. Levine, former top official in the Federal Administration of America. His contribution appeared in The New York Times of 9 January 1999 under the title "What the EU needs is a copy of 'The Federalist Papers'". He put forward this thesis at the start of Economic and Monetary Union and explained that Europe could learn some useful lessons from America in this quest for full economic integration. The most important of these is that, without a federal foundation, sooner or later the economic and monetary union will fail. Considering the dire effects of the banking and economic crisis since 2008 and the financial and economic problems of some member states as a result of the corona pandemic, we see its predictive power: in the absence of a federal foundation - due to political mismanagement during the Maastricht Treaty in 1992 - the single currency under the name 'Euro' acts as one of the increasing divisive forces that drive the Union apart.

Madison and Hamilton's observations are split between New and Out-of-the-box. Interchangeably.

4.2.2 New 1: from non-binding philosophy to binding law

For centuries - from Aristotle to Montesquieu - thoughts on the constitutional and institutional aspects of popular sovereignty and democracy were merely non-binding ideas. That is, until James Madison became involved. First, he made short shrift of the confederal form of government with his treatise 'Vices of the Political System of the United States' of April 1787. This led him to write a letter on 16 April

[96] See the PDF iBook version: https://www.faef.eu/the-european-federalist-papers/

1787 to the then leader of the Confederacy, George Washington, requesting permission to organise a Convention to examine these Vices and to present plans for something better to that Convention. And that 'better' he included a few weeks later in the so-called 'Virginia Plan' of May 1787, a comprehensive plan for a new political order. Washington gave the go-ahead for the famous Philadelphia Convention and the rest is history.

But history as never before: the non-binding thoughts of European philosophers were burned into the binding law of a federal Constitution. The appearance of that Constitution as such, but above all the way in which the words were chosen, added to the brevity of only seven articles, have led to the fact that already today 42% of the world's population lives in twenty-seven federations.

As an aside this: Madison did not take kindly to his criticism of the form of government of and within the Confederacy. After all, the thirteen Confederate states were facing a tough task. From 1776 - the Declaration of Independence - but actually only from 1783 - the official end of the War of Independence - they struggled with the task of turning colonies into states. Each state did so in its own way. They tried independently to invent the wheel of free democratic government. There was no question of unity. By 1787, a muddle of unequal systems of government had developed. This contributed to tensions between the thirteen states. Growing conflicts between a northern, southern, and middle group. Hence the unrest and unease of Madison, Virginia's representative in the Confederate Congress. We see the same conflictual picture in the European Union. But no James Madison.

It is not quite true, by the way, that this had not been seen before. On European soil, a few years earlier, around 1760, a Constitution - the first known in the world - had been drafted in Corsica by its leader Pascal Paoli, in collaboration with the philosopher Jean-Jacques Rousseau. That document was, of course, based on Rousseau's ideas on social contract, popular sovereignty, and democracy, as well as on Montesquieu's ideas on the trias politica. Although this too can be seen as making legally binding the non-binding thoughts of philosophers, the idea of federalisation was absent from that initiative, as it was in America a few years later.

So, the Americans knew their European classics. The Europeans still do not. Except for Switzerland. It decided in the middle of the 19th century to follow the American example. Germany, Austria, and Belgium followed with federal state formation only after the Second World War.

4.2.3 Out-of-the-box 1: ignoring the mandate

The Philadelphia Convention had a mandate, given by law by the Confederate Congress. The quotation below shows the relevant part of that mandate because in this way it is easier to understand how Madison, in Paper 40, defends himself against the criticism that the Convention was guilty of ignoring the mandate, saying:

> "Whereas there is provision in the articles of Confederation and perpetual Union for making alterations therein (-); and whereas experience has evinced that there are defects in the present Confederation (-); Resolved - That in the opinion of Congress it is expedient that on the second Monday in May next a convention of delegates, who shall be appointed by the several States, be held at Philadelphia for the sole and express purpose of revising the articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the federal Constitution adequate to the exigencies of government and the preservation of the Union."

Well, the Convention stepped out of the box twice[97] in Philadelphia. They threw the Confederate Convention into the wastebasket, did not say a word about improving or strengthening the 'Articles of Confederation' and designed a federal Constitution on its own authority. Secondly, they disregarded the mandate to submit their creation as an opinion first to the Confederate Congress and to the parliaments of the thirteen states. Instead, they immediately submitted it for ratification by the citizens of those states through a system of electoral colleges. Hence the criticism from anti-federalists, contained in the contention that the Convention was not authorised to make such a principled departure from the mandate given.

Madison, constitutionalist par excellence, writes in the Paper 40 a defence, though in the form of an attack. He deftly plays with a few ill-formulated words in the Convention's legally formulated mandate. First, he rephrases the mandate as he thinks it is intended:

> "From these two acts [it was preceded by another order, but we leave that aside] it appears: 1st, that the object of the convention was to establish in these States a firm national government; 2nd, that this government was to be such as would be

[97] To understand the great success of the Convention of Philadelphia, we quote Malcolm Gladwell as an example of how a David can yet defeat a Goliath (ibid p. 12-13: "The reason King Saul is skeptical of David's chances is that David is small, and Goliath is large. Saul thinks of power in terms of physical might. He doesn't appreciate that power can come in other forms as well – in breaking rules, in substituting speed and surprise for strength."

> adequate to the exigencies of government and the preservation of the Union; 3rd, that these purposes were to be effected by alterations and provisions in the Articles of Confederation, as it is expressed in the act of Congress, or by such further provisions as should appear necessary (-); 4th, that the alterations and provisions were to be reported to Congress and to the States in order to be agreed to by the former and confirmed by the latter."

And then Madison starts the counterattack. Freely translated:

> "Comparing these words with each other, properly and fairly - as being the authorization of the Convention - I find that the task was to design a national government that would meet the requirements of such a national government and to edit the Articles of Confederation in such a way as to serve those purposes. Well, common sense and legal axioms dictate that there are two rules that must be observed in such a task. One rule is that every part of those words must have some meaning and serve some purpose. The other rule is that if some parts are contradictory, then the least important must give way to the most important part. The end justifies the means, not the other way round. Suppose now that the words with which the Convention is authorised are incompatible; that a national and adequate government according to the Convention is impossible to create by means of **alterations and provisions of the Articles of Confederation**; which words in the mandate should we then embrace, and which ones reject? What is the most important and what is the least important part? What is the end and what are the means? Let the most scrupulous analysts of delegated powers and the incorrigible opponents of the Convention answer this. Let them declare whether the happiness of the people of America was so important that the Confederate Convention should be set aside to create an adequate government, or whether the creation of such an adequate government should be abandoned in favour of the preservation of the Articles of Confederation. Let them explain whether the preservation of those Articles was the end and that a reform of government was the means; or whether the creation of an adequate government for the sake of national happiness was the end - an end originally expressed by those Articles of Confederation themselves - and which now, therefore, because they do not appear to serve that end of national happiness sufficiently, must be sacrificed."

Actually, this passage - in which a few words have been accentuated - is sufficient to end this Toolkit. Those who read this and do not allow themselves to be led by cognitive dissonance see that already in 1787 Madison inexorably said goodbye to the idea that it would be possible to improve a flawed system of states - the Confederacy based on a treaty - by going to change that treaty. That is impossible. Unfortunately, that is what the Spinelli Group and the Union of European Federalists (founded by Spinelli after WWII), among others, have been trying to do for years. They do not know their classics. And/or do not have enough courage to break away from the intergovernmental system of the European Union. If Spinelli were still alive, he might have a stroke.

Madison goes even further. It would be going too far to mention all his arguments. In essence, his argument boils down to this:

> "You want liberty and happiness? Then stop whining. Surely it could not have been intended, with such a solemn mandate from Congress, to prohibit the Convention from devising substantial reforms. Have you still not realised that the Confederate Convention is not instrumental in achieving the goals of liberty and happiness? Changing the articles of that treaty makes no sense. It only makes things worse. To serve those ends we need a federal constitution and that's it."

We resist the temptation in this essay to enumerate how many times the treaties of the EU intergovernmental system of governance have already been adjusted, without being able to guarantee any stability of the Union - let alone happiness of the European people. On the contrary, with each adjustment, things get worse, a typical effect of an underlying systemic failure: to constantly try to resolve conflicts and tensions with measures of the character positive feedback. Thus, strengthening and accelerating those conflicts and tensions. This has already been discussed in detail in Chapter 2.

4.2.4 New 2: The use of concepts from systems theory

Hamilton and Madison already used the term 'system' in their time. This is remarkable aspect number 1.

If we know that systems theory was actually only developed as a science in the 1930s, we must admire the fact that they already understood then that in matters of state formation, the connection between law-making, the allocation of powers, the separation of powers, the organisational design, the design and implementation processes of policy, the supervision and monitoring, the treaty relations with other countries can only take place in two ways, namely right or wrong. For lovers of cybernetics and social systems theory - both to be seen as specific components of general systems theory - the aforementioned papers are a source of pleasure. Especially because of their candid use of the concept of 'system error'. This is remarkable observation number 2.

Hamilton and Madison mercilessly nail the Articles of Confederation - the treaty that was to hold the Confederacy of thirteen states together - against the wall of system error. But they then go a step further and explain that a system based on systemic failures will inevitably collapse. And that is remarkable aspect number 3. They understood back then that a systemic error erodes the system itself. Automatically. There is nothing you can do about it. It works like a melt-down of a nuclear reactor. As already explained in Chapter 2, that process of further

destruction accelerates and expands – through positive feedback measures - of its own accord. To result in anarchy and chaos. They already knew that.

And it is precisely this last point - the fact that a system error inevitably destroys the system - that we see happening in the European Union. Nobody can deny that serious problems from outside the EU – so, externally driven - have led to an increasing number of internal conflicts. External problems such as the banking and economic crisis, the refugee problem, the terrorist threat, the dismantling of the rule of law in some Eastern European Member States, the fragmented approach to the corona pandemic - to name but a few - are increasingly splitting the intended European unity. The Lisbon Treaty that is meant to keep the member states together in a stable community is not only insufficiently instrumental to monitor that goal but is itself one of the faulty products of the systemic flaw in the EU's foundation that is contributing to the splitting process.

Back to Hamilton and Madison. In Paper 6, Hamilton describes his view of the Confederation as a disunion with words like:

> "To look for a continuation of harmony between a number of independent, unconnected sovereignties situated in the same neighborhood would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages."

Because of the systemic flaws in the Confederate treaty, he sees the Confederacy disintegrating, falling prey to the age-old way in which independent states deal with each other, namely by going to war (Papers 7 and 8).

In the Papers that follow, Hamilton accurately describes how this disunion can be seen as a disintegration of a system. And that only an energetic, powerful, and financially independent federal government can prevent such a drama - resulting in new tyranny and anarchy (Paper 9).

Hamilton explains in Paper 13 that the systemic errors of the Confederacy have already led to the formation of three blocks within the thirteen states. A Northern, a Central and a Southern block. And his fear that this might lead to wars and violence between the blocs motivated him to work for the explanation and defence of the federal Constitution as the solution to leave member states in their individuality and self-esteem on the one hand, and to make a separate state provision for common interests and concerns above the states on the other.

What do we see in the EU today? A break-up into four clearly distinguishable blocks. A north-western part that wants to integrate further. A southern part around the Mediterranean that wants to get rid of the euro. A central block that has

problems with both the euro and refugees. And a group of four countries on the Balkan side that advocates more opt-outs (like the UK) from the Lisbon Treaty, mainly inspired by the refugee issue, the strict budget rules, and possible sanctions by 'Brussels' due to their internal evading of the rule of law.

This conflictual situation is strikingly similar to the American Confederation between 1776 and 1787. The question is, however, whether it can be shown that the process of disintegration in the EU can also be traced back to a system error, just as Hamilton and Madison base the collapse of the Confederation on underlying system errors. Well, nothing is easier than that. Again, the all-encompassing system error that is currently destroying the EU can be found in the so-called Schuman Declaration of May 1950. This subject has already been discussed in Chapter 3, but this basic error of the European Union cannot be explained often enough.

In his Declaration, Schuman argued, at the instigation of Jean Monnet, and based on a flood of pro-federalisation arguments between 1945 and 1950, including Eisenhower's and Churchill's federal wishes, that Europe should become a federation under the name United States of Europe. He then made the mistake of placing the creation of this federation in the form of a treaty, thus in the hands of government leaders.

But government leaders, by virtue of their position, can only create policy-based treaty-alliances. They did so in 1951 with the establishment of the European Coal and Steel Community, extended in 1958 under the Treaty of Rome to become the European Economic Community and, since 2009, under the Treaty of Lisbon, the European Union. As explained thoroughly before this is called 'intergovernmental governance'. It is not a federal form of government. In accordance with the basic ideas of, for example, Althusius and Locke, a federal form of government is created from the bottom up, whereby only a very small part of the powers of 'the people' above them are integrated[98] into a federal body and all other powers remain with the people and the states in which they live. Intergovernmentalism is only cooperation in policy areas, works top-down, with enforced uniformity, without democratic control or so-called 'countervailing power', with constant pressure on member states to assimilate. And with punishments if they refuse. Hierarchy in optima forma, being absent in federal statehood.

Back to Hamilton. In Paper 15 he describes the Confederation as a political monster with principal defects and fundamental errors. In Paper 16 he sees the Confederation dying a natural death, exactly the picture that belongs to a systemic

[98] This is discussed in detail in Chapter 6.

error: the system is eroded by internal errors and sooner or later implodes. In Paper 22, he sums up everything that falls under the heading of these defects and errors in the term system, with the words:

> "In this review of the Confederation, I have confined myself to the exhibition of the most material defects; passing over those imperfections in its details by which even a considerable part of the power intended to be conferred upon it has been in a great measure rendered abortive. It must be by this time evident to all men of reflection, who are either free from erroneous prepossessions, or can divest themselves of them, that it is a system so radically vicious and unsound as to admit not of amendment but by an entire change in its leading features and characters."

With this, he already supports in Paper 22 what Madison adds in Paper 40 to those who accuse the Convention of not being authorized to ignore the mandate from the Confederate Congress and to take a totally different course. Hamilton also reports in Paper 22 that the collapse of the Confederate system is due to the fact that it was never ratified by the people. To conclude with: "The fabric of American empire ought to rest on the solid basis of the consent of the people."

In Paper 30 - apparently already destined to become Secretary of the Treasury - he lashes out at the flaws in the Confederate system that make it impossible to establish a sound financial basis for an energetic and powerful government. And, like Madison, he always contrasts two extremes: liberty and happiness on the one hand - to be realised with the Federal Constitution - and chaos and anarchy on the other hand if one sticks to the Confederacy. Working with these perceptions, the image has slowly grown of federalists as the good guys and antifederalists as the bad guys.

In almost all of his 29 Papers, Madison also talks about the danger of disunion, and in Paper 18 he mentions the ".... weakness, the disorders, and finally the destruction of the confederacy". But it is only in Papers 37 to 40 that he uses the term 'system' to go deeper into the undeniable disintegration of the Confederacy. See here an observation in Paper 37:

> "It has been shown in the course of these papers that the existing Confederation is founded on principles which are fallacious; that we must consequently change this first foundation, and with it the superstructure resting upon it."

In Paper 38, he uses the doctor-patient metaphor to explain how to tackle the constitutional problem of a disintegrating Confederation. In doing so, he lumps all opponents of the Federal Constitution together as doctors who will never be able to cure a sick person because they have the wrong mindset. In Paper 40 he makes

it clear that the Philadelphia Convention was intended "for correcting the errors of a system by which this crisis had been produced."

Madison's Papers 38, 39 and 40 are considered the most fundamental. In those Papers, he explains how to make a good state order. By opting for a federal system. This does justice to the importance of sovereignty at two levels: the sovereignty of the federal state as such, vested with the powers to promote the common interests, and the sovereignty of the federated states for all other powers. But his Paper 51 is also special, mainly because of its words:

> "You must first enable the government to control the governed; and in the next place, oblige it to control itself - as much a need in a republic as in any other form of government."

4.2.5 New 3: The invention of the vertical separation of powers

The horizontal separation of the powers of the three state powers - expressed in the trias politica - is familiar fare. The vertical separation is not. And that is precisely the essence of a federal system. That is what Chapter 6 is about.

In Papers 38, 39 and 40 - appended to Paper 45 - Madison explains this. The concept of vertical separation of powers does not appear in his argument. Madison uses two words to explain this separation: 'federal' for a body with a limited set of powers (in the German federation called the Kompetenz Katalog) that are urgently needed to look after the common interests. Things like, for example, a common defence and a common foreign policy.

The other word is 'national'. He reserves it for the otherwise unlimited complex of competences that remains with the Member States and the People. He keeps harping on 'national' to take the wind out of the sails of anyone who fears that a federal body could become a new tyrant. The states remain the basis of the new state. The states remain sovereign but are united – we use the term integrated as in assimilated - on a federal level. This vertical separation of powers is therefore called 'shared sovereignty' (the subject of Chapter 6). Madison already mentions this vertical separation in Paper 14.

As an aside this. Shared sovereignty as a fundamental aspect of state building from the bottom up was already known to Althusius around 1600. At the same time, Jean Bodin, a declared opponent of the idea of sharing sovereignty, lived. In his view, sovereignty was one and indivisible, with the sovereign, the ruler, the monarch.

A second aside is in order here. Defenders of the Treaty of Lisbon argue that decisions of the European Council that are unwelcome to Member States can be blocked by the principle of subsidiarity. Again, we argue that this principle does not work. It says in Article 5(3) of the Treaty: 'leave to the Member States what can best be done by the Member States themselves'. But it does not work and is therefore one of the sources of growing frustration and resistance from national parliaments and sections of the population. Why does it not work? Because elsewhere in the Lisbon Treaty, Article 352(1) states that the European Council can take any decision it deems to serve the objectives of the Union. So, the European Council can always break through that principle of subsidiarity. Well, in a federation, this is impossible. A federal body can only take decisions on those subjects that have been given to it as a limited, exhaustive list of powers by the states. In other words, due to the vertical separation of powers, subsidiarity is one and indivisible with the federal concept.

4.2.6 Out-of-the-box 2: Ignoring the Unity Principle

In Paper 40, Madison admits that the "... convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation of all the States, they have reported a plan which is to be confirmed and may be carried into effect by nine States only."

What is the case here? The Confederal Treaty required that important decisions - and certainly one to amend the Treaty and, of course, one to abolish the Treaty in particular - required unanimity. That is, of all thirteen states together. The Convention, however, had decided to ignore this and submit the draft federal Constitution to the people of the thirteen states, to ratify or not via a system of delegates per state and then to let this Constitution enter into force when the people in nine of the thirteen states had ratified it.

That was a clear violation of the rules of the Confederal Convention. But then, the Convention did not want to accept the risk of one or two states against the Constitution - and thus its end - and opted for the introduction of a majority system: with nine states in favour (being two-third of thirteen), the Constitution would enter into force.

As an aside, as already mentioned several times, the European Council also still uses the system of unanimity, although for decisions of a lower order (of EU Councils of specialist ministers) a majority system is used on occasion. The curse of an unanimity system is the fear of weak politicians of decisions that could damage the interests of a member state, the consequent promotion of national and nationalistic agendas (own country first), a disguised right of veto and thus an exchange of votes in back rooms.

Madison defends this out-of-the-LEGAL-box move by first noting that this issue has barely received any attention in the flood of criticism of the Convention's work and that this apparent forbearance could only have sprung from the "irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth."

Those who wonder whether the Federalist Papers are full of this kind of rough language get an affirmative answer. Only John Jay, who could only write five Papers due to illness was milder in the use of his words. Probably because, as a celebrated diplomat, he was used to getting his way in a different way than Hamilton and Madison.

4.2.7 Out-of-the-box 3: ratification by the people

It was already clear from the previous point: no ratification by a Confederate Congress, but by the people themselves via a system of electoral colleges. Unheard of in confederal circles but pushed through by the Convention and supported by the authors right through all the Federalist Papers. The people as the alpha and at the same time the omega of federal statehood. Interesting observations on this point can be found in Hamilton's Paper 22, including the sentences of which the first has already been quoted: "The fabric of American empire ought to rest on the solid basis of the consent of the people. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority'.

And Madison goes a step further in Paper 39: "It is to be the assent and ratification of the several States, derived from the supreme authority in each State - the authority of the people themselves. The act, therefore, establishing the Constitution will not be a national but a federal act."

4.2.8 New 4: The ingenious system of checks and balances

The invention of the vertical separation of powers is the consequence of the Convention's rejection of democracy in the sense of popular sovereignty, as proposed by Aristotle. The Convention did not want everyone to decide on everything in a marketplace - as at the Agora in Athens. Instead, it put the concept of 'republican government' on the map. The term 'republican' had two connotations. Firstly: never again a monarch who rules over us like a tyrant. Secondly, a government of, for and by the people.

But .... the Convention was afraid that a rejection of the ancient Greek concept of democracy - and thus of the need to accept that the people should be governed - would nonetheless bring a potential tyrant into play once again. In addition, as

adherents of Montesquieu's trias doctrine, they wanted to implement the horizontal separation of powers anyway, the trias politica. This left them with the question: how do we tie it all together?

The Convention found the solution in an ingenious system of checks and balances to steer both the horizontal and vertical separation of powers in the right direction. They understood very well that the legislative, executive, and judicial powers would in any case operate on each other's territory, and that the federal body would always try to seize more power at the expense of the power of the states (and vice versa). But they devised a brilliant system of countervailing powers to stop usurpation of one power over the other.

A detailed description of the usefulness and necessity of that system of (a) horizontal separation, (b) vertical separation and (c) the system of checks and balances to keep the powers in balance both in the horizontal and vertical sense can be found in Madison's Papers 47 to 51.

4.2.9 New 5: A Constitution of only 7 Articles with only generally binding law

In his Declaration of May 1950, Schuman made the systemic error of placing the creation of a European federation in the hands of people who, in their capacity, cannot do so, namely heads of government. As one of the droppings of that systemic error, the European Union was launched in 2009 under the Treaty of Lisbon. That treaty - consisting of two partial treaties - has more than 400 articles. Not only do some of them contradict each other, but the articles are followed by Protocols and Declarations which, with exceptions to the previous articles - so-called opt-outs - frustrate the operation of those articles. The Treaty of Lisbon is therefore a legal monstrosity. We are talking about a collision of rules. Legal students learn that legislative technique requires that you only make rules that are generally binding. Exceptions to rules are a curse, they multiply like rabbits, making the regulation not enforceable.

How did the Americans do it differently? Apparently already aware of the saying 'the more rules, the more fools', they made a Constitution of only seven articles. The members of the Convention knew only too well that the thirteen states would try to cram their own state folklore into the Constitution and that they would not be able to stop it unless they committed themselves as a matter of principle to only universally binding constitutional law. No exceptions for anyone.

Well, one of the nice advantages of making generally binding law is the consequence that you can then - by definition - regulate very little. If everyone has to agree with the law to be written, there is not much to regulate. It was precisely by applying this principle that the people of nine states were able to support the

Constitution relatively quickly. After 1789, the Constitution was improved and adapted by twenty-seven amendments. However, it is still a model of conciseness.

As an aside, we would like to say this. That figure of only nine states for the federal Constitution to enter into force bears a striking resemblance to Article 20 of the Treaty of Lisbon. That article gives nine EU Member States the right to enter into a form of enhanced cooperation. Without qualifying the content of that enhanced cooperation. So, it could be a federal cooperation. Nine countries could form a European Federation together and function as a federation - i.e., as a single Member State - within the EU system, just as the federations of Belgium, Austria and Germany do. This figure will play a role later when we talk about the ratification of our federal Constitution by the people of Europe.

Federalising the EU by starting small, i.e., with a handful of EU-states, is also a suggestion by Salvatore Calleri, President of the Foundation against the Mafia dedicated to Antonino Caponnetto, being also Coordinator of the Red Tulipans for the United States of Europe, in a personal note to the FAEF Board:

"The United States of Europe must be established above all because it follows the federal model unlike the European Union which follows a confederal model. Blow up the founding treaty of the European Union and create a federal constitution, a common budget, and a common debt. Begin as soon as possible by creating a Federation between some states, like Italy, France, Spain, Portugal, Luxembourg, and Greece."

4.2.10 To conclude

Hamilton discusses Europe extensively in various papers. He expresses admiration for the Europe of the end of the 18th century, but also fear. Fear of the commercial power of a number of European countries, with their many trading ships and a military fleet to protect that trade. But he is not free of arrogance. In Paper 11 he says: "By a steady adherence to the Union, we may hope, erelong, to become the arbiter of Europe in America, and to be able to incline the balance of European competitions in this part of the world as our interest may dictate."

With remarks like these, Hamilton underlines the urgency to build up a strong defence, and thus to get a lot of money from somewhere to pay for it. Which he later succeeded in doing as Minister of Finance. In Paper 12 he states that the world consists of four parts, each with its own interests and then continues with:

> "Unhappily for the other three, Europe by her arms and by her negotiations, by force and by fraud, has in different degrees extended her dominion over them all. Africa, Asia, and America have successively felt her domination. (-) It belongs to us

> to vindicate the honour of the human race, and to teach that assuming brother moderation. Union will enable us to do it. Disunion will add another victim to his triumphs. Let Americans disdain to be the instruments of European greatness."

Arbiter in Europe they have indeed become, at least since the beginning of the 20th century, by freeing us twice from a despotic ruler. Awakened from the isolationism of the 19th century, American military supremacy - and its associated commercial power - is still vital, though damaged by President Trump's actions. But there is no doubt that America will recover from that dark 2016-2020 period, and that the guiding motives of the Philadelphia Convention, and of the authors of the Federalist Papers - namely liberty and happiness versus chaos and anarchy - will again become major themes. Why? Because they have a brilliant federal Constitution.

In the words of 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."

4.3 We Europeans[99]

4.3.1 Introduction

'We Europeans' is an erudite, exciting, and instructive book. Wim de Wagt tells in detail how, immediately after the First World War, it was understood that the Treaty of Versailles - by its rigid measures against defeated Germany - sowed the seeds of a new world war. And also, that the League of Nations - founded on the initiative of the American President Woodrow Wilson - would be too weak to avoid a new world war.

De Wagt sketches how a Europe-wide longing for European solidarity and cooperation - also supported by many countries outside Europe - flared up between 1919 and 1940. After which that fire went out in the violence of the Second World War. The ravages of WWI offered the prospect of unprecedented geopolitical innovations, both within and outside Europe. It created a platform for statesmen, writers, scientists, and many activists to express in various ways the usefulness and necessity of a united Europe. Again,

[99] This book is published in the Dutch language only.

and again, the concept of 'federation' accompanied her, as the fundamental instrument for achieving Europe-wide solidarity, citizenship, cooperation, and fraternity.

De Wagt offers us a frightening mirror of failing political authority between the two world wars of the 20th century. Frightening, because now - around 2021 - nationalist-driven politics throughout Europe are once again reviving the ever-dormant protectionism of European states, unwilling and unable to bridge the anarchy constitutionally and institutionally - in the sense of the absence of governance that sufficiently binds these states together - and thus render it harmless.

This book focuses on those moments between 1919 and 1940 in which the pursuit of a European Federation - as an instrument for European unity, brotherhood, and citizenship - is most apparent.

4.3.2 Some protagonists: Coudenhove, Briand and Stresemann

Three people are central to this study. The Frenchman Aristide Briand, in the often changing French cabinets sometimes Prime Minister, sometimes Minister of Foreign Affairs. And th e German Gustav Stresemann, first Chancellor and later Foreign Minister under Prime Minister von Hindenburg. For their services to the European cause, they were jointly awarded the Nobel Peace Prize in 1926.

Then we have Count Richard Coudenhove-Kalergi. Born in the former Austro-Hungarian Empire (with ancestors from the Netherlands) after the change of various national borders he suddenly became a citizen of Czechoslovakia. Politically independent. In the spring of 1920, he devised a plan: the unification of Europe under the banner of a new international organisation. At that time in history, the President of Czechoslovakia - Tomás Masaryk - was already working on the creation of a federation of states in Central Europe. The ultimate goal was a federal union of Danube states, including Austria and Hungary. Today's Hungary, under the populist-nationalist Prime Minister Victor Orbán, is far removed from that goal.

So soon after WWI, all sorts of currents were stirring: nationalism, federalism, imperialism, orthodoxy, socialism, communism. Tomás Masaryk did not consider the time ripe for Coudenhove-Kalergi's plan of a united Europe. Although he had previously made efforts to establish the United States of Eastern Europe; as a buffer between Germany and Russia. However, due to his advanced age, he no longer felt able to work on such a comprehensive plan as Coudenhove's. Coudenhove-Kalergi then turned to Briand and Stresemann and ignited the fire in these two statesmen to devote themselves to the unification of European states.

Thirdly, there was a very large group of people indirectly involved. Amongst them, names such as the French Prime Minister Herriot - a convinced advocate of European integration. In addition, there was the Prime Minister of England, Henderson, and the Chancellor of the Exchequer, Churchill. In Bosco's book (see next review), he too appears as a European federalist, also in relation to Herriot and Charles de Gaulle. Jean Monnet - later an advisor to the aforementioned Robert Schuman - also plays a role on that stage. This comes up again at the end of Bosco's book review.

It would be going too far to list here all the high-profile people who have been part of this process of the revival of European unity in the context of federalism. An exception must be made for two Dutchmen.

Firstly, Robert Peereboom, editor-in-chief of the Haarlems Dagblad newspaper. After WWI he revealed himself as an activist for world peace, but his approach did not find favour at the 1931 League of Nations General Assembly in Geneva. Therefore, he focused on approaching citizens. He took over a campaign from The News Chronicle (UK) urging readers to show their support for the disarmament conference in Geneva in February 1932. Peereboom started a petition in the Netherlands. No less than 84 newspapers participated. He collected 2,438,908 signatures in a population that at that time counted only 4.5 million Dutch people over 18 years old. With 70 boxes filled with petitions, he travelled to Geneva.

Secondly, J.H. Schultz van Haegen, then leader of the Dutch section of the International Confederation of Young Europe (in Geneva) and secretary of the 'Vereeniging tot bevordering van de oprichting van "De Vereenigde Staten van Europa"' (Association furthering the establishing of the United States of Europe). He dared to come forward strongly in order to advocate federalism in accordance with the American constitutional and institutional set-up for Europe as well. For example, in a pamphlet entitled: "Whoever wants peace, promotes the establishment of the United States of Europe."

In 1929, he wrote a booklet entitled: "Why I left the Liberal State Party 'De Vrijheidsbond'". The fact that he was not taken aback may be seen from this quotation from his speech (in February 1936) as chairman of the 'Verbond tot bevordering van het gemeenschapsbelang in Staat, Provincie en Gemeente' (Alliance for the Promotion of Community Interest in the State, Province and Municipality): "How is it that we so little accomplish? To that I reply that our country is still governed by politicians and not by statesmen. And undeniably, we need statesmen precisely to serve the common good."

Schultz van Haegen knew the federal plans of Coudenhove-Kalergi and of Aristide Briand well and understood better than anyone: "The urge will have to come from below, because only a powerfully expressed public opinion can achieve something." But - alas. Wim de Wagt mentions that Schultz van Haegen, despite all his efforts, did not succeed in finding more than two thousand members for his Association for the Promotion of the United States of Europe.

4.3.3 Treaty of Versailles, League of Nations, many new European states, rising nationalism

As is well known, the Treaty of Versailles in 1919 contained harsh measures against defeated Germany. The drafters of the treaty soon acknowledged that this was the source of a new war. So, the need soon arose to ease the pain for Germany with additional political measures. These included mitigating the recovery payments and withdrawing allied troops from occupied German territory.

At the same time, the League of Nations came into being. Its great champion was US President Woodrow Wilson. But due to a wave of American isolationism, America itself did not join this League of Nations. That fact, and the fact that it was a Confederation of States of a very light confederate content, made the League of Nations a powerless organisation. France and Great Britain concentrated on their own economic and political interests. Europe crumbled under the Treaty of Versailles: De Wagt (p. 56):

> "The powerful Austro-Hungarian economic zone no longer existed but had fragmented into a puzzle of independent states with their own customs borders and money systems. Added to the territories that had previously belonged to Germany and Russia and had now also evolved into independent states, Europe had gained no less than eleven new countries. Ethnic minorities living on the 'wrong' side of the border - some thirty million people - felt uprooted and inadequate."

A fertile breeding ground for riots and revolutionary seizures of power. After which two people emerged as the strongest: Hitler and Mussolini.

4.3.4 Actions by Coudenhove - Briand - Stresemann

In this context, Coudenhove-Kalergi travelled through Europe with plans for European solidarity and found an audience with Aristide Briand and Gustav Stresemann. The first, however, had the handicap that French cabinets changed very quickly. And the latter was in the middle of the administratively weak Weimar Republic. So, they had to draw their strength and energy mainly from themselves. Something that led to Stresemann's early death in 1929.

Briand was the one who, based on the ideas of Coudenhove-Kalergi, developed plans for more unity in Europe, while Stresemann then tested these plans against the German interest, especially with a view to softening the rigid measures of the peace treaty.

What did Coudenhove create? He was not affiliated with any political system and could therefore, independent of whose political views, create his own international movement of hope and reconciliation. Its goal: the creation of a Pan-European Union with an independent international legal court to settle conflicts between nation states. And to solve economic problems with a European customs union and a common currency.

He drew on the work of John Maynard Keynes 'The Economic Consequences of the Peace' from 1919. Keynes argued that rich countries should help poor countries through international solidarity arrangements. But the political reality was that only the reparations of Germany and the financial debt of France and Great Britain to the United States were paid. De Wagt (p. 63):

> "In his [Keynes] critical book, he made the prediction that because of the patchwork of new states, each with its own borders and customs barriers, the negative consequences for the international economy could not be avoided. A large part of the continent was condemned to new trade wars."

What the negotiators of the Treaty of Versailles had not understood was picked up in France, via Coudenhove, by Édouard Herriot, the left-liberal Premier around 1924. He understood as no other that (p. 73): "Everything, indeed everything, moves towards union." Hence the title of his 1930 book 'The United States of Europe'. Herriot embraced Coudenhove's vision and on 29 January 1925 argued in the French parliament for a united Europe. Stresemann, by then no longer Chancellor of the Exchequer but Foreign Minister, did not react and waited for what was still to come. Well, Coudenhove came and persuaded Stresemann to support Herriot's speech with a press article.

This is one of the many examples that De Wagt quotes to make clear that Stresemann did believe in a Pan-European plan and was willing to fight for it, but

preferably behind the scenes. But only in terms of policy - focused on economic cooperation - not in the form of a political union.

While Coudenhove had a growing number of followers - Thomas Mann, Stefan Zweig, Maria Rilke, Albert Einstein, and others - and managed to rally one political party after another to his idea of a Pan-European, Herriot's left-wing cabinet fell in 1925 after only a few months. So, Coudenhove went to Geneva to try to get the League of Nations to lead the creation of Pan-Europe. This failed because the Secretary-General of that League, Sir Eric Drummond, replied (p. 80), "Please don't go too fast." From this, Coudenhove understood that he first of all had to get France and Germany behind him, went to London, met with quite some reluctance, except from Leon Amery, the Minister of Colonies, who only had the prospect of cooperation for Europe in the form of a voluntary association of independent states, but without a central authority.

As a side note, De Wagt mentions that Coudenhove went to the United States of America for a few months where there was much interest in his Pan-European ideas. Both among isolationists as well as among the more internationally minded.

After his return to Europe, Coudenhove reported to Prime Minister Aristide Briand in January 1926. The latter had just concluded the Locarno Treaty (1925): a revision of the Versailles Treaty with a softening of measures against Germany and the drawing of new borders in Western Europe. This was important for Germany, France, and Belgium. Coudenhove was confirmed in his suspicion that Briand would support the idea of a Pan-Europe. Not only with lip service, but also with deeds. He had a strong argument for this: Pan-Europe committees had already been set up in many countries. Briand understood that Coudenhove was not knocking on his door with an empty plan, but that this way of thinking about Europe already had a very large support base.

Coudenhove organised the first Pan-European Congress in Vienna in October 1926, with no less than 2,000 participants from 28 countries. And with political leaders from those countries. Despite the euphoria, this congress did not get any further than a programme that aimed at dismantling national borders, establishing a federation of states and reconciliation between states as a condition for lasting peace, freedom, and prosperity. With an appeal to the League of Nations to make a start on establishing a European customs union by means of an economic conference. Intended as a first step towards a united Europe.

Coudenhove became the president of a Pan-European Union that was to be established. But still the unmistakable basis for such a Union among the European

citizens was not covered by a broad and solid cooperation of political leaders throughout Europe. De Wagt (p. 119):

> "The politicians hesitated, waited, turned their heads away, turned a deaf ear or were outright opposed. Meanwhile, in bars, salons, halls and coffee houses, discussions flared up, impassioned speeches were delivered, noisy, smoky meetings went on into the night. Wise men, freebooters, students, activists, professors, and businessmen wrote articles, letters, books, programmes, and reports. Daydreaming loners dragged their manuscripts to patient desks. And they all contained a great promise: the new Europe. But what did it look like?"

The grassroots of society saw a united Europe as desirable, but the leading political leadership did not respond. Except for strong support from the Netherlands, in the persons of Prime Minister Colijn, the harbour baron Van Beuningen[100] and Anton Philips. But all in all, Coudenhove did not really get ahead.

Until Aristide Brian revealed a sensational plan. He promised Coudenhove at the end of 1928 to raise the theme of Pan-Europe at the next - tenth - General Assembly of the League of Nations in September 1929. On 31 July 1929, he announced in the French parliament that he would propose to the League of Nations the establishment of a European Federation. He wanted to launch the United States of Europe. De Wagt (p. 157): "For I am of the opinion that between peoples who belong together geographically, as is the case in Europe, a kind of federal bond should exist."

As an aside, even though Briand spoke of the usefulness and necessity of a European federation, conceptually he meant a confederation. This is evident from numerous comments accompanying his idea of a federation. Among them is the sentence:

> "It is clear that such a federation will be mainly concerned with the economy; this is where the most urgent need lies. I believe that success can certainly be achieved in this area. But I am convinced that a federal alliance can also be beneficial from a political and social point of view. Europe will not be able to live in peace as long as the peoples do not find ways of working closely together."

Big applause. He, and his political colleagues, always assumed that cooperation between countries in one or more policy areas would create a federal system. Quod non. A few people knew that, constitutionally and institutionally, a federation

[100] See also Harry van Wijnen, Grootvorst aan de Maas, D.G. van Beuningen 1877-1955, Balans, 2004.

is something quite different from a confederation of states, but they too assumed that a confederation of states would evolve into a federation as a result of frequent treaty amendments. Apparently, they had never read the American Federalist Papers in which James Madison roundly condemned this line of thinking.

The idea that the confederation of states would grow into a federation was also the idea of Herriot, who was a great advocate of a European federation, but in the sense that it should evolve from economics into politics. And definitely not the other way round. Well, that is the erroneous assumption then - and still today - that an intergovernmental operating system will eventually evolve into a federal system.

Be that as it may, Briand was supported by Stresemann, who had no problem with Briand's visionary way of thinking. But he too got no further than arguing for the economic integration of Europe through the creation of a customs union. In his view, the union of states would be primarily economic and only later political. P. 165: "In the future, a United States of Europe might then be possible."

This begs the question: how far are we now in 2021?

Briand was commissioned by the League of Nations in September 1929 to develop his plan and present it by May 1930. He called his plan 'Union of Solidarity between the States of Europe'. During the further elaboration of this plan, he received support from Churchill, who wrote an article in the Saturday Evening Post of 15 February 1929 under the headline 'The United States of Europe'. But without England. That was enough to lead its Dominions in the context of the Commonwealth of Nations. On 3 October 1929, Stresemann died. Briand was then on his own.

Briand's plan for a federal alliance became official French policy and was made public internationally on 1 May 1930 under the title: 'Mémorandum sur l'organisation d'un régime d'union fédérale européenne'. Coudenhove saw it as the Magna Charta for a future united Europe. The twenty-six European governments were given until 15 July 1930 to react to this Memorandum with a view to discussing their reactions during the General Assembly of the League of Nations in September 1930. The publication coincided with the second Pan-European Congress of Coudenhove in the German capital. It was a signal to the nationalism that was rising there that it was serious about striving for European unity.

Briand's Memorandum contained a large number of typically non-federal components: only cooperation between countries, each remaining absolutely sovereign, fully independent politically. Apparently unfamiliar with the work of the

Philadelphia Convention and the Federalist Papers, people did not yet realise that in a federation the member states share sovereignty with a federal organ. In short, connoisseurs of American political history see in this sketch of intended European union the image of the American Confederation from 1776 to 1789: weak and conflictual, ready to fight each other at the first encroachment on their supposed sovereignty.

Institutionally, the plan went no further than a periodic conference modelled on the Assembly of the League of Nations. And this would have to design the administrative and managerial structure. There was also the idea of setting up a permanent political commission as the study and executive body of the union. With a rotating presidency every year. Finally, a third body, a secretariat to serve the political commission.

There was, however, a curiosity in the Memorandum. Briand assumed that the envisaged economic cooperation would only be possible by merging the national economies. And that would only be possible by bringing that policy area under joint political responsibility. And that pointed in the direction of federal thinking. Briand was obviously striking a balance: his words were confederal in nature, but the elaboration of the envisaged economic cooperation in even this one policy area would require political union. Germany would never accept that.

However, Briand's plan had the support of the French government. What's more, he had been smart enough to accommodate this supposedly federal Europe in Geneva within the League of Nations. As a result, he could count on the support of countries outside Europe. Especially from America, even though it was not a member of the League of Nations.

The international press understood that thinking in terms of a united Europe was no longer a utopia of daydreamers but had now reached the level of political decision-making. For Coudenhove, however, it did not go far enough. As an independent thinker and doer, he launched his own plan for a Pan-European treaty (p.219): "... a federative union of states, in which the peoples cooperated politically, economically, and spiritually, but retained their full sovereignty. All citizens of the member states were at the same time European citizens." His plan included an outline of the institutions that such a federation of states would have to bear.

And so, we arrive at the preliminary discussions of the General Assembly of the League of Nations on 8 September 1930. On the table, then, was Briand's plan for an economic union. But the circumstances were not favourable for the creation of a European customs union. The stock market crash of 1929 was taking its political

toll. While there was support for a periodic European conference and its own secretariat, the idea of a separate political commission was rejected. So, once again, there was no political cover for a constellation that could have led to close cooperation. They did not want to go any further than setting up a study committee to come up with proposals for a possible European federation. Briand was deeply disappointed. A few days later, during the General Assembly itself, he submitted a resolution (p. 236): "…. which states that the close cooperation of the European states in all international fields is of vital importance for the preservation of peace." Supporters and opponents of closer European cooperation alternated, and the deliberations ended with Briand's acceptance of a European study commission. He became its chairman. And the aforementioned Sir Eric Drummond, Secretary-General of the League of Nations, became Secretary. The first session was scheduled for 23 September 1930 with an intergovernmental economic conference in November.

As an aside. This is the first time that the whole process took place within the concept of intergovernmental thinking and action from the outset. Even though the term 'federation' was bandied about lavishly over the years, on balance we got no further than thinking in terms of a confederation of states. Something that, according to Stresemann, was the ultimate measure of European cooperation. Ironically, Germany of all countries is now a federal state, and what a one at that.

When the study committee had to get going, Briand invited the Dutch parliamentarian Hendrik Colijn to give a speech. Colijn was an uncompromising advocate of free trade and opponent of protectionism and enjoyed an international reputation in these fields. On 16 January 1931, Colijn lashed out at all European politicians who did not want to work on dismantling tariff barriers. As a result, an important part of the League of Nations' work had become worthless. But those political leaders did not move. Only France insisted on the supremacy of politics over economics. But all the other countries did not wish to share Briand's ideal of a political federation (even though his idea was not strictly a federal one). Germany made common cause with England and France had to give in.

Under this pressure, the study committee nevertheless tried to achieve results. And that became a proposal for the General Assembly of the League of Nations on 7 September 1931: a 'L'Union Douanière d'Europe Fédéré', or - in German - a 'Europäische Zoll-Union'. In English: a 'European Freetrade Zone', in the Netherlands the 'Federale Europese Douane-unie'. This body would meet every three months in a big conference of government leaders (a typical intergovernmental feature, compared to the present European Council) to prepare an economic zone without tariff walls on the inside. And again, the emphasis was on economic union, not political union. The aim was to put an end to national

economic protectionism and to introduce free movement of goods, services, and products. Later also of labour.

And then Aristide Briand died on 7 March 1932. However, his study committee continued to work. At a very low level, in fact. After several years of research, the Assembly of the League of Nations gave permission in September 1936 - at the suggestion of the study committee - to start the preparation of a common currency. And on 1 January 1940, the time had come. From that moment on, twenty-six countries in the economic union would have a single currency. Except for England, which held on to its pound. At the same time, the entire European banking sector - except for England - was to be subordinated to a new financial authority: The Central European Monetary System. The name of the Union was changed to: 'L'Union Fédérale des Nations Européenne Souverains' (Federal Union of Sovereign European Nations). The Second World War put an end to all this.

Just for a moment, the title of that Union. Again, the frenetic addition of the term 'sovereign' in order not to create the impression that the participating nation states were willing to give away an ounce of sovereignty. Completely unaware that already in 1787, the Americans had made the most important political discovery after Aristotle's concept of 'popular sovereignty', namely the invention of the concept of 'shared sovereignty' by introducing the vertical separation of powers.

Finally, by putting the word 'federal' in it, it could be sold as something that came out of Briand's ideas of a European Federation. And by explicitly calling the participating states sovereign, Germany could agree because it was the legacy of Stresemann. In any case, the system was not to resemble the United States of America.

The study committee continued to exist until 1938, without any further results. Coudenhove fled to America in 1938. Apart from his plans for European federalisation, he was honoured by the Council of Europe in 1972 - the year of his death - by ratifying his proposal of August 1955 to adopt Beethoven's 'Ode to Joy' as the national anthem.

4.4 June 1940, Great Britain, and the First Attempt to Build a European Union

4.4.1 Introduction

Andrea Bosco has a large number of publications on federalism to his credit. This 2016 book is a detailed account of how leading Britons worked tirelessly during

the Interwar period to create a European Federation. This is all the more an exceptional book now that Britain has decided to turn its back on the European Union.

It is also remarkable that this process of federalisation from England took place simultaneously with the same kind of actions on the continent. Wim de Wagt only mentions in passing that from England, too, a large-scale effort was made towards European federalisation, according to standards of federalism. Bosco in this book pays hardly attention to the fact that Briand and Stresemann were working on the continent with striving for federalisation, with the instrument of intergovernmentalism.

Be that as it may, both books provide a fascinating picture of a strong flare-up of European solidarity in the context of federalism from two 'foci'. Fires that flared up simultaneously - although a few hundred kilometers apart - and burned for almost twenty years. Without success, incidentally. Political support that was too late to cover the social support that was already there, combined with the outbreak of the Second World War, put an end to both fires.

Bosco begins with a reference to the British Brexit, with the possible consequence that England itself will disintegrate because Scotland and Northern Ireland may not wish to follow the exodus from the European Union. Quite rightly, he then states that this will accelerate the already ongoing disintegration process within the EU itself (p. 7):

> "The fundamental reason for the existence of the European Union has not been, in fact, the defence of a special cultural, racial or religious identity, but the creation of a definite method for resolving conflicts among States by peaceful and constitutional means. The first Community institutions were actually not imagined and created 65 years ago simply to establish a free-trade area and promote economic development among its members. They were conceived as the first step in a political process which, through the pooling of certain vital governmental functions such as economy and currency, aimed to achieve a federation, not a league of nations, establishing economic stability as a fundamental condition for political stability."

In the Introduction, Bosco talks about an event that surprises many people. As already mentioned before but important to reiterate it to understand Britain's role regarding European federalism, Winston Churchill (just before France capitulated in 1940) offered the French Prime Minister an indissoluble union, as a first step towards a European or even World Federation. With this step, England intended to persuade France not to capitulate. This failed due to communication problems

when the Germans were about to take Paris. But strictly speaking, Churchill's offer was the natural conclusion to a process, which had been going on for almost twenty years, to lead the English nation to European federalisation. A process that, because of its great social support, also convinced the initially sceptical Churchill, partly under the influence of advice from the French Jean Monnet. That was in 1940. We will discuss it again shortly.

That English thinking in terms of federalisation began in the 1920s. Public support grew steadily and led in 1938 to a Federal Union, founded by three young men Charles Kimber, Derek Rawnsley and Patrick Ransome - "to favour the application of the federalist principle to Anglo-French relations". This book by Bosco is about the first eighteen months of that Federal Union. He summarizes the work of that organisation as follows (p. 8):

> "The contribution of the Federal Union to the development of the federal idea in Great Britain and Europe was to express and organise the beginning of a new political militancy: the aim of the political struggle was no longer the conquest of national power, but the building of a supranational institution, a federation (not a league) of nations. With Federal Union, the United States of Europe was no longer an abstract 'idea of reason', but the first step of a historical process: the overcoming of the nation-State, the modern political formula which institutionalizes the political division of mankind."

Two aspects are important in this quotation:
- the indirect reference to the weakness of the League of Nations; something that is also discussed extensively in De Wagt's book;
- the danger of nation-states, the product of the Peace of Westphalia in 1648; also emphasized by De Wagt and leading for Briand and Stresemann to dismantle the - in their eyes pernicious - nation-state thinking and acting by making joint government possible beyond the national borders.

Just as Briand and Stresemann realised - and with them thousands of other Europeans - that wars would continue to rage as long as the area between nation-states was not covered by a transnational government - the zone of anarchy between nation-states - the same kind of thinking was developing in England at the same time. The difference was that, whereas on the continent the pursuit of European federalisation was tackled by attempts at intergovernmental cooperation, the English Federal Union was the prototype of correct federalism. In other words, on the model of the American federation, with its vertical separation of powers and thus the sharing of sovereignty between the member states and a federal body. In other words, the 'Briands' and 'Stresemanns' of the time wanted to work with the instrument of treaties under a confederal system. The English Federal Union, on the other hand, wanted a Constitution with the accompanying

institutions for a real federal statehood, for the whole of Europe and even with America included.

Against the backdrop of the Brexit event, this part of British history is remarkable to say the least: England at the beginning of the last century at the forefront of European federalisation. Things can change. However, Brexit has given a new impetus to upgrade the already existing British devolution - Scotland, Wales and Northern Ireland with their own state bodies and their own domain of decision-making powers - into a fully-fledged British federation. It could be another exciting political battle in the United Kingdom.

The Federal Union was supported on a very large scale in society, but only to a limited extent in the political arena. British politicians began to take an interest in it when it was actually already too late, namely only after the failure of the Munich Treaty of 30 September 1938. In this Treaty, Hitler had promised to renounce the total annexation of Czechoslovakia in exchange for acquiring the right to annex the Czech Sudetenland, with about three million Volksdeutsche (German speaking inhabitants). With this commitment British Prime Minister Neville Chamberlain thought he had bought lasting peace: "Peace for our time". Instead, he got a world war, which subsequently had to be won by Churchill.

So, it was only between Munich 1938 and the fall of France 1940 that a large number of English politicians from the Liberal and Socialist persuasion began to meddle with the idea of federalisation. Among them was the famous Lord Lothian, Philip Kerr. Lord Lothian had previously been involved in the overly strict Treaty of Versailles and from the early 1920s devoted himself to spreading the idea of European federalisation as the only constitutional solution that could bridge the zone of anarchy between nation states and thus prevent another war. Lord Lothian became an important 'oracle' for the three young people who founded the Federal Union. But as Wim de Wagt already showed: a great social movement does not yet mean that it is quickly covered by a political movement. Briand and Stresemann profited from the presence of a particularly strong social pro-federal movement in Europe, but political colleagues from other European countries were hardly persuaded. When both protagonists died (in 1929 and 1932), the whole process came to a standstill. In England, therefore, the work of the Federal Union only received firm political support from prominent politicians - including Churchill - in the period of the winter of 1939 and the spring of 1940. Also supported by the media and the Anglican Church.

At that time, Jean Monnet was in London. His role and significance in the context of European federalisation should not be underestimated, although this has been questioned in Chapter 2. In staccato, let us first take a look at his career:

- Son of a father who ran a Cognac Cooperative in the French town of Cognac; the fact that a cooperative is a brother of its sister federation - the writings about him are not conclusive - might have already influenced his thinking in terms of federalisation.

- He was sent to London before the age of 20 to learn English and became involved with businessmen who were organising the supply of supplies to the Allies (it was WWI); thus, at an early age, he came into an environment of politics, diplomacy, bureaucracy, finance, and trade.

- From 1919 to 1923, he was Deputy Secretary-General of the League of Nations, thus in the vicinity of the aforementioned Sir Drummond who, as Secretary-General of the League, became Secretary of the Study Committee for the elaboration of the Briand Memorandum.

- Between the two World Wars he stayed several times in America where he worked his way up to the White House as advisor to Roosevelt.

- In World War II, he was in London to use his relationship with Roosevelt to promote American aid before America itself entered the war.

- This also brought him into the close circle of Churchill and De Gaulle, which made it easy for him to move around in influential political circles in France after the war.

- Thus, he became the co-author of the Schuman Declaration of May 1950, the birth certificate of the European Coal and Steel Community - founded one year later - and the birth of the intergovernmental system of what is now the European Union.

We have already reported that the Schuman Declaration contained a serious systemic flaw that inevitably eroded the EU and, as a result, has now reached the end of its political life cycle. But it is still unclear how Monnet, as Schuman's advisor, could make the same mistake that Briand and Stresemann - and in their wake thousands of others - made, namely assuming that you can start with an intergovernmental/confederal system and then think that this will eventually evolve into a federal system. That is simply out of the question. As described in the first part of this chapter, Madison radically rejected this view as early as 1787.

One might assume that Monnet must have learned from Roosevelt how the constitutional and institutional structure of a federation worked. Almost any American can tell you this. And yet, with this text from the Schuman Declaration, he allowed his Foreign Minister to tell a story that had nothing to do with federalisation, under the guise of the urgent need for European federalisation. In that plan, Schuman does indeed twice insist on the need for a European Federation, but by placing its creation in the hands of government leaders who can then only set up cooperative ventures, an intergovernmental operating system has been created on balance. And such a system only works as long as things go well. Partly under the pressure of externally-driven (geopolitical) problems, internally-driven conflicts automatically arise, leading to the disintegration of the system. With an end to the political life cycle as a result.

That is why we now have the dysfunctional European Union that is trying to keep the Union together with unimaginable concessions and compromises. This is the typical use of the principle of positive feedback explained in Chapter 2: acceleration and strengthening of deviations of the just course. Later, we will return to the role that Monnet played in connection with Churchill's offer to the French government to form an indissoluble union. How powerful this aspiration was may be seen from the following quotation from Bosco's book (p. 10):

> "It was this debate on federalism in general, and on Anglo-French wartime collaboration in particular, that brought the British Government to consider the application of the **federal principle** in order to transform Anglo-French war co-operation into a stable political union. Jean Monnet - then Chairman of the Anglo-French Coordination Committee, a body based in London and created on the initiative of Monnet himself in order to give greater effect to the war effort - had been strongly influenced by that lively debate. (-) From March 1940 the Foreign Office had seriously examined an 'Act of Perpetual Association between the United Kingdom and France' drafted by Arnold Toynbee and Alfred Zimmerman at Chatham House and set up an ad hoc inter-ministerial Committee chaired by Maurice Hankey in order to translate it into a Constitution."

This quote captures the essence of correct federalisation. In England - it must be said again - the pursuit of federalism as an instrument of European union had the hallmark of an awareness of the constituent elements of proper federalism, while on the continent at the same time it was professed with characteristics of confederal-intergovernmental governance.

4.4.2 The events of the Federal Union

The first steps towards the Federal Union actually began before the First World War. Co-led by Philip Kerr, a federalist orientated Round Table decided ".... that a

quarterly journal dealing with foreign and imperial affairs would be published to educate the peoples of the Empire on federalism". The first issue was published in November 1910. This journal became the main vehicle for the debate on federalism in the British Empire, Ireland, India, and Europe.

This initiative, by the way, relied heavily on the Federal Plan that Prime Minister Lord Salisbury had already launched in 1892 as an attempt to give England and its Dominions, together thus the British Empire, the status of a federal form of government. The remarkable thing about it is the insight - even then - that member states of a federation retain their sovereignty and share only a small part of it - namely that which looks after their common interests - with a federal body. The advent of that Federal Plan of Salisbury ignited a federalist fire that immediately led to the creation of thirty-one sections in England, Canada, Australia, South Africa, and New Zealand. But Prime Minister Gladstone rejected the idea of federal statehood for the Empire as early as 1893, only to find - as happens with underground fires - that it flared up again in 1910 and continued to burn until the Second World War. Bosco does not regret Gladstone's decision, by the way. He sees 'Imperial Federalism' as a kind of contradiction in terms. So, do we.

A second underlying motive for the Round Table to breathe new life into federalism around 1910 was closer to home: it would bring peace to the relationship between England and Ireland by casting England, Scotland, Wales, and Ireland together in a federal form of government. The only solution to stop the Irish pursuit of independence. How history repeats itself can be seen from the claims of Scotland (and sometimes Northern Ireland) to leave the United Kingdom if Brexit actually would go ahead. Hence, immediately after the 2016 Brexit referendum, articles appeared in The Guardian to upgrade the current devolution to a full-fledged British federation.

A third motive of the Round Table was a desire for world peace. Hence, in the context of their federalist motives, its successors also consistently promoted the idea of a world government, strongly supported by the United States of America.

Around 1917, the Round Table faced a crisis of existence. But Lord Lothian kept the federal fire burning. As the British reincarnation of James Madison, he wrote one federalist document after another, the highlights being 'The Prevention of War' in 1922 and 'Pacifism is not Enough' in 1935.

Like Briand and Stresemann on the Continent, he was acutely aware of the danger of perpetuating strict nation-state design. Therein always lay the source of the next war. Cross-national federalism - with common administration while retaining member state sovereignty - was the only solution to prevent this.

In addition to Lord Lothian, Lionel Curtis also made a significant contribution to spreading federalist thinking. He even became the dynamic leader of the Federal Union. Bosco writes of him: "The fruits of his political doctrine are offered in The Commonwealth of Nations and Civitas Dei, a philosophical work on the origin, development and end of history, identifying in federalism the final stage of historical development." It would probably please Curtis to know that by now – 2021 - 42%+ of the world's population live in twenty-seven federations.

There were many more prominent figures with contributions to the drive towards European and, if possible, global federalism. There are too many to mention here. It should be mentioned, however, that Richard Coudenhove-Kalergi, mentioned in the previous book, had an influence on this English federalism, but not to the level of the Federal Union. So here Bosco briefly mentions that Coudenhove, Herriot, Briand and Stresemann were working on the continent with this federalisation under a confederal denominator.

Bosco also notes that British historians paid little attention to the lively federalist fire that flared up between 1920 and 1940 and devoted their writings mainly to the very last phase of this. Namely, the moment when Churchill, too, realised that only by federalising - in the first instance with France and then Europe-wide - could the coming war be prevented. But that insight came too late. Public support for this had already existed for a number of years. But political support followed far too slowly. Until it no longer made sense. The Germans took Paris, France capitulated under pressure from Pétain in the Reynaud government, and the rest is history.

4.4.3 The Federal Union in a nutshell

In 1937, Clarence Streit, an American journalist working for the New York Times in Geneva, published in 'Union Now', a call to create a federal union with no less than fifteen countries: Britain, France, the United States, Ireland, Canada, Sweden, Norway, Belgium, the Netherlands, Finland, Switzerland, Australia, New Zealand and South Africa. Remarkable: a federation with countries that were even far removed from Europe. Streit explained that only democracy on an international level was capable of resisting the perniciousness of nation-state agitation - slipping into National Socialism - and that there was no more homogeneous group of countries than these fifteen to prove it.

Streit knew the British Lionel Curtis in the context of his Civitas Dei, a writing which Streit - despite its federalist character - initially did not appreciate because of Curtis' strong emphasis on the notion of God. Curtis claimed that the inevitable global federalisation was a project of God, which would be realised sooner or later. Streit - working in the midst of the continental nationalist turmoil - did not

want to wait for that: federalize within six months - was his view - otherwise it would be too late. Curtis thought rather of a time frame of a few generations. But he changed his mind after having carefully read Streit's 'Union Now'. Indeed, he saw in it - in contrast to those who regarded the nation-state as the last stage of political progress - the connection to a world government. Bosco (p. 23): "Mankind 'will achieve world government' Curtis concluded, but on the corpses of politicians, and professors of political science." Truly a pithy statement.

Subsequently, in 1939, Curtis took the initiative to spread Streit's 'Union Now' on a large international scale. Churchill was also approached. It resulted in a strongly growing social support for federalisation, even on a world scale. This automatically led to the attention of four renowned think tanks: the Council for Foreign Relations in New York, the World Peace Foundation in Boston, the Institute of Pacific Relations and Chatham House in London. It was not possible to join the League of Nations, which still exists, because this body was already in the process of turning off the lights.

It did, however, immediately please Lord Lothian. He was impressed by Streit's work and began to support it as a lever to strengthen federalist efforts in England. Bosco writes about a letter from Lothian dated 28 February 1939 in which he remarks that the importance of Union Now lay in the fact that it (p. 28):

> "... penetrated through the jungle of political confusion and economic compromise which have befogged the world since 1920 to the only principle which can solve the problem of war and prosperity in the modern world. Only when the democracies grasp the profound nature of that principle and begin to give effect to it will they resume their leadership of mankind."

Lothian perceived Streit's work as a continuation of the revolutionary way in which the American federation came about at the end of the 18th century.

Again, it should be pointed out that the way people in England thought, spoke, and wrote about federalism between 1920 and 1940 was based on the same conceptual features as at the Philadelphia Convention of 1787: federalism by the book. So different from the thinking, speaking, and writing on federalism in the same period on the European continent. From beginning to end, this had a confederal-intergovernmental character. Whereby the term 'federalisation' was used in vain. Just as in May 1950 in the Schuman Declaration.

Lothian realised that the value of Streit's work would quickly disappear if it was not underpinned by a solid organisation. He therefore sent Streit's work to influential friends to test whether it could lead to a social movement in both England and the United States. At the end of February 1939, the Round Table began to consider

the idea. In the period when Hitler was violating the Munich Convention, Lord Lothian published some editorial comments in The Observer in May 1939. In them, he advocated a federal Atlantic bloc of democracies in order to continue to guarantee dominion over the seas. By placing the centre of gravity of Western civilization on the North Atlantic side in the form of a federal system, their democracies would be able to defend themselves against the inevitable attempts of National Socialism to take over power in the West. So clearly intended as a permanent federal union. The New York Times took up this idea, knowing incidentally that Lothian was being mentioned for the post of British ambassador to Washington. With him, this magazine thought, a closer cooperation between England and America would be possible.

In May 1939, Lothian presented ‘Union Now’ to a large audience - again on the theme that the problem of nation-state anarchy should be tackled by deeds, not propaganda. He proclaimed the view that the world was forced to create a federal union sooner than thought. In the ensuing discussion, it was agreed that the situation at that time closely resembled the position of the thirteen confederate states between 1776 and 1787 in America and (p. 31) ".... that the enemy to beat was primarily the cult of 'unlimited sovereignty'". This intervention by Lothian led to fierce debates, also far beyond those high-ranking circles.

On this Bosco says (p. 33):

> "The British people began to understand the full intrinsic value of the federalist alternative, albeit in general terms, and that was the starting point of a conversion that, in the space of fifteen months, would entangle the great majority of the vital forces of the country. It is true that large portion of British public opinion was persuaded to adopt a federal policy only because they felt threatened by the impending outbreak of a new war, but it is also true that without that project the British people would have slipped into war without a specific plan for post-war order, and therefore without positive motivation for facing that desperate struggle. Federalism was certainly not everybody's horizon, but it offered to most open minds a coherent interpretation of the root causes of international anarchy and war, by advancing, in principle, a permanent remedy. It was this need for radicalism to attract the attention of many young people, who were psychologically preparing themselves for a moral rearmament unprecedented in the history of the country."

The current unmistakable tendency of some EU countries to retreat within nation-state borders, the artificial creation of enemies and thus the instigation of fear and the call for a strong man, the turning their backs on the EU on the basis of a nationalist agenda, are understood by a slowly growing group of Europeans as the new danger threatening our democratic achievements, which can only be stopped by a radical intervention in the current operating system of the European Union:

the throwing away of the intergovernmental system, to make way for a federal union.

Lothian and his thousands of supporters believed in May 1939 that a comprehensive federal union would arrive very soon (p. 34):

> "The Union will come about with miraculous speed when it does come ... My reasoned belief is that none of us shall be able to stay out of war for two years more unless we make this Union, and that if war does come without it, the USA will not enter it except on the Union basis."

But unfortunately, the hopes and expectations of people like Lothian, Streit and Curtis were not met by an adequate political response. The social support for federalisation was there, but politicians were hesitant to start preparing the necessary measures.

Meanwhile, two young people had taken over some of the work of Lothian, Streit and Curtis. In the summer of 1938, Charles Kimber, and Derek Rawnsley (both 26) started a movement to promote the idea of a federation of European democracies. Bosco describes their endeavour as a demonstration of the extraordinary capacity of the British people to stand up for universal values, and the courage to use all means to secure them. It became a movement far beyond the opportunism of Neville Chamberlain who, with the Munich Treaty, had already resigned himself to the fact that Hitler would never stop his annexation plans.

Kimber and Rawnsley understood that the confederal League of Nations would fail to stop Hitler and Mussolini, so they embarked on a plan to strengthen the system of democratic values with a tightly knit federal European union in such a way that National Socialism would not be able to dominate it. They were joined by Patrick Ransome, ten years their senior. Supported by a large group of friends, they started distributing federal writings. Support from all circles followed, including Lothian and Curtis. The latter invited the three to visit him (January 1939) to explain that much federal work had already been done by Streit with his 'Union Now'. Their response was the immediate creation of the Federal Union.

The response to that initiative was extraordinary, but it had a problem that ultimately led to the demise of this Federal Union. By basing it as an organisation on Streit's writing, 'Union Now', they were embarking on a federation that was unrealizable because of its size. Streit's work (remember he was an American) was based on a federation between the United States, European democracies, and the Dominions of England. Bosco then says (p. 41):

> "Europeanists and Atlanticists had then to find a compromise advocating a union of democracies open to any country to join. This compromise was however later to be one of the main causes for the movement's eventual disintegration."

Lothian also tried to explain to the three founders of the Federal Union that they should concentrate more on making the essence of federalism clear. Bosco (p. 41):

> "The future movement should have promoted 'the idea of federation', highlighting the devastating consequences of national sovereignty, and the need for international cooperation, by demonstrating that the federation was the only institution capable of 'limiting national sovereignty' enough 'to allow cooperation to become creative and not repressive.'"

With that advice, they set to work to concretize the idea of a federation. They would publish a draft federal Constitution, ask politically mature and geographically suitable states to follow them, then hold a referendum and - if the result was positive - give one of those states the leadership to organise an Institutional Conference with the aim of adopting the Constitution and thus laying the foundations for a federation. They themselves as leaders of the Federal Union would not participate as political parties but would organise and supervise the whole process.

This set-up is almost identical to the way the successful Convention of Philadelphia operated in 1787. This also stimulated Herbert Tombeur and Leo Klinkers to set up such a federation process in 2013 after they had published their European Federalist Papers. They were to hold a three-day Convention in Bucharest in November 2013 - under the auspices of the Jean Monnet Association there - with about fifty leading federalists to improve their draft federal Constitution and then offer it to the European people through a referendum. They had already made many arrangements, even the location of the meeting - in the presidential palace of the former dictator Nicolae Ceausescu. Due to a lack of financial resources, they were not able to realise this. But fortunately, we - the Federal Alliance of European Federalists - still have the script. And that has been incorporated into Chapter 7, the outline of the European Citizens' Convention.

To support their idea of a draft Constitution, plus Convention, plus referendum, Lothian published an article in March 1939 entitled ‘Federal Union Now’. Again, he emphasized the danger of international anarchy resulting from the rigidity of nation-state thinking. And of the importance of federalisation to stop this. Not a 'league of governments', because by now it was clear that intergovernmental cooperation came to nothing as soon as a country felt its interests were threatened, but a federation of peoples. Bosco (p. 43):

> "Leagues of governments were necessarily concerned to 'perpetuate national sovereignty and not to make the world safe for democracy and for the people. The League of Nations had failed because, as an Assembly of sovereign states, it had neither the power nor the authority to formulate a common policy."

The three youngsters then organised their Federal Union into three sections: a Research Institute, a Public Relations Department, and a Central Office as the nucleus of the pro-federalisation social movement that was already underway and needed further support. Lothian and Curtis did what they could to build it up.

4.4.4 Jean Monnet, Winston Churchill, and Charles de Gaulle

In a number of chapters, Bosco tells in detail:

- How Rawnsley, Kimber and Ransome continued to work.
- How the pro-federalist social movement became more and more extensive - partly through the support of the Anglican Church - but also
- How the three slowly but surely grew apart - partly because of their differences in character and partly because of the different ideas of Curtis and Streit
- How Lothian left that stage to become ambassador to Washington.
- How more and more enthusiasts with dissenting ideas encumbered the Federal Union.
- How their Federal Convention 23-24 September 1939 in Oxford went ahead but exposed conflicting views.
- How the too rapid growth of the many dozens of departments led to proliferation and increasing distance from the Central Office.
- How internally people began to fight over the most important posts.
- And how the ever weaker internal organisation of the Federal Union slowly succumbed to the weight of increasing social support.

Despite these struggles, by February 1940 the Federal Union consisted of 204 sections with more than 8000 members. The war spread to the west, to the Netherlands, Belgium, and France. Monnet, Churchill, and De Gaulle intervened to use the power of a federal initiative to stop the war before France fell.

Bosco starts Chapter VII, entitled 'Jean Monnet, Churchill's proposal and the downfall of France' with an extensive quote from a telephone conversation of De Gaulle with the French Prime Minister Reynaud at 4.30 p.m. on 16 June 1940. See the quotation. So, this is about that indissoluble union that Churchill offered to France.

> "At the most fateful moment in the history of the modern world, the Governments of the United Kingdom and of the French Republic desire to make this declaration of indissoluble union and unyielding resolution in defence of liberty and freedom against subjection to a system which reduces mankind to a life of robots and slaves.

> The two Governments declare that France and Great Britain shall no longer be two nations but one. There will thus be created a Franco-British Union. Every citizen of France will enjoy immediately citizenship of Great Britain; every British subject will become a citizen of France. The devastation of war, wherever it occurs, shall be the common responsibility of both countries and the resources of both shall be equally, and as one, applied to its restoration. All customs are abolished between Britain and France. There shall not be two currencies, but one. During the war there shall be one single War Cabinet. It will govern from wherever it best can. The two Parliaments will unite. A constitution of the Union will be written providing for joint organs of defence and economic policies. Britain is raising at once a new army of several million men, and the Union appeals to the United States to mobilize their industrial power to assist the prompt equipment of this new army. All the forces of Britain and France, whether on land, sea or in the air, are placed under a supreme command. This unity, this union, will concentrate the whole of its strength against the concentrated strength of the enemy, no matter where the battle may be. And thus, we shall conquer."

Reynaud noted with increasing amazement - and pleasure - this Declaration of Union, as De Gaulle dictated it by telephone, but suddenly paused to ask De Gaulle, "Does he agree to this? Did Churchill give you this personally?" De Gaulle then handed the phone to Churchill who was sitting next to him. The latter confirmed that this was a decision of the British War Cabinet. Reynaud 'transfigured with joy'.

That moment was preceded by a daring action by Monnet. Bosco recounts how Jean Monnet - driven by the pro-federalist enthusiasm in British society - had now transferred his own federal brainpower to Churchill. Churchill had to listen to him because through his relationship with Roosevelt, Monnet acted as a go-between to get war material from America, while America itself still maintained a neutral stance. Because of this important position, he dared to approach Churchill in early June 1940 with a daring proposal. Bosco describes it as follows (p. 300):

> "It was however only at the beginning of June that Monnet understood the necessity of 'a bold stroke that would fire the imagination of the two peoples on the edge of despair,' a 'total union, an immediate merger, that seemed necessary if we were to face together the choice between tyranny and freedom that was now being thrust upon us.' France and Great Britain had to 'join forces, in war and for the future.' Persuaded that they should begin from a merger of the two air forces, Monnet appealed to Churchill on the 6 June:"
> "If the forces of our two countries are not treated as one, we shall see the Nazis gain mastery of the air in France, overpowering her, and then concentrating all their strength against the United Kingdom. The Allied aircraft now operating in France are outnumbered by several to one. But if we combine the two countries' air forces, the ratio becomes about one to one-and-a-half; and with our proven superiority when evenly matched we should then have a chance of winning. In a word, victory

> or defeat may be determined by an immediate decision to use our respective aircraft and pilots in the present battle as a single force. If that in turn requires a unified command for our two air forces, then this problem should in my opinion be studied, and studied now."

This interaction between Monnet and Churchill took place as the French troops withdrew and the British invasion army tried to avoid mass slaughter by leaving the beach of Dunkirk with all its might. In that chaos, Churchill's offer came too late. Also, because he had previously expressed strong doubts about the usefulness and necessity of a federal union between England and France. Just like De Gaulle. But both eventually understood that with a radical constitutional renewal there was a chance to end the war, or at least to stop Hitler's further advance. Provided that ...., and that was the point, France would get enough political courage from that extreme offer of England to refuse to surrender and to tell Hitler that France would fight until the bitter end.

On that famous 16th of June 1940, De Gaulle had already telephoned Reynaud a couple of hours earlier to tell him that he could expect a far-reaching communication from Churchill and that he himself would not have to take any important decision - De Gaulle means here a decision to surrender - before he would receive that message from Churchill later that day. Churchill, in his war cabinet, was still drawing the outlines of a Franco-British government and could not tell Reynaud until later that afternoon.

And then it went wrong. On that day, Reynaud received two messages from the English War Cabinet. Communications that contradicted each other. One gave Reynaud a free hand to offer Hitler an armistice, provided the French fleet would first be brought to safety. The other was Churchill's offer - also from the War Cabinet - to create a joint federal union on condition that France would not surrender. Because the first message reached the French government earlier than the second, it immediately got a majority in that French government where Pétain had already pleaded for an armistice. France capitulated. Churchill received that sad message at 18.30, while sitting in the train to Southampton, from where a delegation of the British government would meet Reynaud and his government on board a warship near the French coast to sign the ‘Act of Union’. Bosco quotes Clement Attlee (p. 306): "We knew it was all over and Reynaud had lost. We got out of the train and drove back to Downing Street and went back to work”.

4.4.5 Epilogue

In order to establish a European Federation, it is not only necessary that there be Europe-wide public support for it, but also that this support operates as a unit. Even more than with the ultimate failure of the flickering federalisation on the

continent, the gradual weakening of the leadership of the British Federal Union due to internal conflicts - combined with its inability to channel the enormous power and energy of social support in such a way that it became a basis for political decision-making at an early stage - was the cause of its downfall. The war did the rest. After the war, Churchill still argued in some famous speeches for the establishment of the United States of Europe, but that theme disappeared from the political agenda when six heads of government founded the intergovernmental European Coal and Steel Community in 1951, with the Schuman Declaration of May 1950 as its birth certificate.

How things went wrong with that confederate-intergovernmental operating system afterwards, Guy Verhofstadt tells in the next book.

4.5 The Sickness of Europe[101]

4.5.1 Introduction

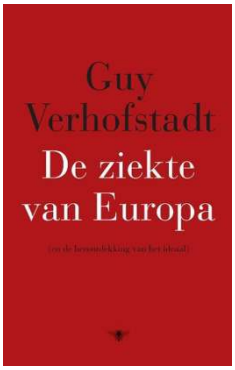
This book is about one subject only: the structures and procedures of the European Union itself as the main causes of the Union's malfunctioning and thus of its inevitable disintegration. Verhofstadt describes a breathtaking array of symptoms of a sick Europe and shows that they all stem from the system itself.

From this book we show you a passage from Chapter 12. It is a text that is likely to make any sincere European weep and encourage a radical end to this festering aspect of the supposed Union.

4.5.2 Extract from Chapter 12 of Verhofstadt's book

The title of that Chapter 12 is: 'The delusion of the European budget'. In the first 2-3 pages of that chapter, Verhofstadt describes one of the most serious symptoms of the Union's treaty base: the opt-outs. This is the mechanism whereby member states only agree to participate in the European Union - and in new agreements or conventions - if they receive all kinds of pledges and concessions for their own countries. No promises or concessions mean no participation in treaty changes and in additional agreements or conventions. This behaviour, far removed from any notion of unity and from the notion that unity embodies the essence of the European Union, continued to fester over the years. To create in 2005 - that is, even before the European Union as an entity came into existence in 2009 - a situation that Verhofstadt puts into words as follows:

[101] This book appeared in the Dutch language as 'De ziekte van Europa'.



"It was a satisfied but tired-looking British Prime Minister who addressed representatives of the European Parliament in Brussels on 20 December 2005. After months of palaver, the European Council under his leadership had finally managed to reach an agreement on the European Union's multiannual budget. Six months earlier, the Luxembourg Prime Minister Jean-Claude Juncker, who was presiding over the Council at the time, had failed to do so. That was not Juncker's fault. On the contrary. With his enormous experience, he had worked hard and had already come fairly close to an agreement in June. But of all people, Tony Blair had sabotaged this agreement. Did he not want to allow Jean-Claude Juncker to succeed? It was an open secret that the two did not like each other. Anyway, the official version was that Blair wanted to do things differently. No more multiannual budget that was just a copy of the previous one, but a new budget that would mark a break with the past. One that would put an end to dilapidated agricultural spending and really focus on technology and innovation, on the future. But in practice, not much came of it. The outcome was little different from the draft budget Juncker had proposed. What's more, to reach an agreement Blair had to pull out all the stops for weeks. He would have had to buy off one member state after another. That was the only way to win them all over. The result was unbearable. Hardly anything at all remained of the original idea. In order to complete the deal, he had to promise the Member States no less than forty-one gifts: compensations, corrections and ad hoc exceptions. These ranged from 100 million in aid for the Canary Islands, 200 million in aid for the peace process in Northern Ireland to 865 million for the dismantling of a dilapidated nuclear power station in Lithuania. And these were the most sensible concessions. To win the Netherlands over, Blair doubled the compensation for the Member States that collected customs duties, although this was the Union's own income to which they were not entitled. To please Germany, Austria and the other net contributors, their VAT payments were reduced, but by a different percentage for each country. Sweden and again the Netherlands were given a fixed rebate on top of their so-called GNI contribution. In order to hoist Poland, the Czech Republic and Hungary on board, they were allocated additional resources from the structural funds against all the applicable rules. The same happened to Cyprus and the German state of Bavaria. In order to appease Finland, Ireland, Italy, Luxembourg, France and Portugal, additional rural development payments were granted to each of them. Spain and the Baltic States also obtained additional funds that they could use as they wished, regardless of the rules. It was a huge horse-trading exercise. Blair defended the deal fiercely but added in the same breath that this exercise could not be repeated. Tony Blair - he is far too proud for that - did not admit his failure, but his 'never again' spoke volumes."

The central phrase in this quote is: "It was a horse-trading exercise". That is how it was in the EEC of 2005 and how it still is in the EU of 2009. A 'Union'? Forget it. Ever since intergovernmental European governance came into being in 1950 (the Schuman Declaration), 1951 (the establishment of the ECSC), 1958 (the

establishment of the EEC) and 2009 (the establishment of the EU), it is not the jointly-felt and assumed responsibility but the principle of 'own country first' that has guided European decision-making. This is painstakingly guarded by adherence to the principle of unanimity in the European Council, except for matters that do not involve a threat to a Member State.

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5. STANDARDS OF FEDERAL STATEHOOD VERSUS MISCONCEPTIONS ABOUT FEDERALISM

5.1 Introduction

After the many scattered comments on the strength of federalisation, this chapter is devoted to the cornerstones of proper federal statehood. Just as it is necessary to know the decimal system to create mathematical formulas, to know musical notation to compose an opera, and to know the alphabet to write a novel, so it is necessary to know standards[102] of federal statehood to design a federal Europe. Those who take it to heart can then be ready to start building the European federal state after the predicted systemic crisis.

This chapter also deals with persistent misconceptions about federalism. As mentioned earlier, these are rather like conspiracy theories. It is therefore difficult to dispel them because it is not a question of learning something (adding cognition) but of unlearning something (letting go of cognitive dissonance). In any case, with examples and drawings an attempt is made - in accordance with FAEF's motto 'educating the federalists' - to provide elementary knowledge about federalism. Without knowledge of standards of federal statehood, the people are at the mercy of the political fads of the day.

Or as Thomas Jefferson put it: “Educate and inform the whole mass of the people… They are the only sure reliance for the preservation of our liberty.”

5.2 Main points of federalism

Federalism is not a legal but an organisational matter. It is laid down in a legal document. If it is a public federation, it is a federal constitution of Citizens and Member States. In the case of a private federation, it is a notarial deed of associations, or cooperatives, or foundations, or social organisations, or companies. Whether governments can join a private federation depends on the rules that allow them or not to conclude agreements with non-public bodies. There are twenty-seven federal states in the world, which together accommodate just over 42% of the world's population. In addition, there are many thousands of private federations. Why? Because a federal organisation is a rock-solid form of organisation that leaves each participating organization in its autonomous value and only looks after common interests that individual members cannot (or can no longer) look after themselves.

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[102] See examples of some standards in six videos of a Q&A between Leo Klinkers and a group of Italian students. Besides the English version, these videos are subtitled in 7 other languages.

Parties entering into a federation entrust some of their powers to that federal body without losing anything. On the contrary, they gain something extra, namely that the federal body not only takes over the representation of their interests but also adds value to it. Entrustment of powers implies that the federating parties do not lose powers. So, contrary to the persistent misconception, they do not lose sovereignty. The powers that they entrust to a federal body remain but become dormant. If the federal body mishandles it, the members can make those powers work/live for them again, for example, by amending the constitution or the underlying act, or by dissolving the federation.

There are strong, weak, and failed federations. Whether a federation is strong or weak depends on two factors: (a) is the federation designed according to standards and (b) is the federation run by sensible people?[103] The more one messes with the standards and with the appointment of those who lead it, the weaker the federation. If the weakness is so serious that the federation falls apart, one speaks of a 'failed federation'. For example, the Mali Federation, the federation of the United States of Indonesia, that of Cameroon, of Czechoslovakia and others in various parts of the world.

The most important standard is the so-called vertical separation of powers. This is expressed in a constitution or act in the sentence: 'Powers not entrusted to the federal body remain powers of the federating parties.'

In the case of a public federation, the federating parties are the peoples and countries that conclude the federation. In the case of a private federation, they are the private organisations. So, they remain autonomous, sovereign, independent in all matters and subjects not entrusted to the federal body. In our draft federal constitution for a federal Europe, this rule is stated in Article I, Clause 2 (see Chapter 6):

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

This implies that when a federation is concluded, it must be determined only for which common interests the Federal body may work with the powers of the Member States. All other powers remain with the individual parties making the federation. This implies that the list of powers for the federal body is (a) limited and (b) exhaustive/enumerated. In other words, the federal body cannot and should not take decisions on a subject that is not in that limited enumerated list.

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[103] The United States under President Trump offers a fine example of a strong federation that could not be broken despite its mentally disturbed President.

Of course, in practice, differences of opinion will arise on the precise interpretation of the scope of a power entrusted to the federal body. In a public federation, this is solved by the trias politica (the separation of the legislative, executive, and judicial powers) governed by a system of checks and balances that ensures that the separation remains guarded. The concepts of trias politica plus checks and balances do not fit a private federation. Differences of opinion on what a private federal body may or may not do as a result of differences of interpretation on the scope of a power must be solved in another way. For example, by including in the notarial deed that a commission of independent persons resolves disputes with a binding opinion.

For the creation of a federation, these are the most important steps:

(a) The parties wishing to make such a federation consult on the question of the usefulness and necessity of a federation.

(b) They concentrate on the question: 'What limitative set of our own powers should we entrust to a federal body, supposing that thereby the interests of our own country will be better served than if we each try to look after those interests on our own?'

(c) They do not spend a minute on the question of which powers remain with the federating parties. By definition, these are all powers not entrusted to the federal body. Therefore, there is no need for a provision on subsidiarity in a federal constitution. Federation and subsidiarity coincide. See 3.2.

(d) An important aspect in discussing whether or not countries are willing to join a federation is financial-economic. The creation of the first federal state in 1787-1789, the American one, was possible because Article VII of the Federal Constitution stipulated that the debts of the states joining the federation were, from then on, debts of the federation. Those states could therefore start with a clean financial slate. In our own draft of a ten Article Federal Constitution for Europe, this principle has been included in Article X.

5.3 Examples of private federations

Working with examples of private federations proves useful in clearing up misconceptions about federalism.

5.3.1 The UEFA

Take a look at one of the largest private federal organisations in Europe: the UEFA. At its base are thousands of amateur and professional football clubs. With their

own legal identity as an association, they form - organizationally - a federal structure in a national federation. Clubs need this association because they cannot look after certain common interests on their own. For example, the drawing up of a competition schedule from August to June. They cannot decide for themselves who they will play against the following week.

There are fifty-four national football associations in Europe. Including those of Monaco, Andorra, and Lichtenstein. Together they form the federal body called UEFA. It organises the Champions League and the quadrennial European Championship. An individual local club or national association cannot do that.

This UEFA example shows some basic characteristics of a federal organisation:

- It is organised from bottom to top: first there were clubs, then came the UEFA. Keep that in mind: a federation is built from the base of society. Not just a private, but also a public federation. Essential to being a federation is that decisions made by a federal body are unmistakably rooted in the interests of the base.

- It is appropriate here to mention the significant adage of the basis of federalisation: 'All sovereignty rests with the people'. Although this applies to a public federation, it applies in full to private federations: you do it for the base.

- That structure from bottom to top is layered. The bottom layer is formed by the individual clubs. The second layer is the national association. Then comes the UEFA as the European layer and above that there is the FIFA. Through a continental division the FIFA represents all football clubs in the world with an agenda that the national and continental associations - let alone the individual clubs - cannot promote. That FIFA, in turn, is a member of the International Olympic Committee. This IOC is probably the largest private federation in the world.

- The members of each tier are sovereign, autonomous, independent in their own right. They determine their own order. Their own rules. Their own cultural identity. Only matters that they cannot regulate themselves they have - together with all other clubs - regulated by a federal body. But that body is only empowered to decide on those matters that have been entrusted to that federal body as a common interest. Limitatively and enumerated.

- So: organised from bottom to top, in layers that are each in turn masters of their own house, but which on their own are unable to look after some limited

common interests and are therefore very happy to share their sovereignty with a body that guarantees the protection of those common interests.

The example of the world of football should make it clear that a federal organisation is in no way a super-organisation or - in the public sphere - a super-state that destroys the sovereignty of its members, as some people tend to claim. On the contrary. In essence, a federal organisation is the only form of organisation in which its stratified parts each retain their own sovereignty. This will be explained in more detail with a few drawings later.

5.3.2. The apartment building

This example is likely to be understood best by people who own an apartment in an apartment building, also known as a condominium. If an owner wants to decorate his home with IKEA furniture, no one is able to prohibit or force them to go to another shop instead. Would the owner on Wednesday like to eat minced meat and on Friday fish, no problem. Twice a day a cold shower, go ahead. Apartment owners are bosses in their own homes.

However, in such a building there are also some interests that no individual owner can look after on his own. Who takes care of the maintenance of the roof, the lifts, the central heating, for example? Who keeps the stairs clean and ensures a regular painting of the building? Because individual owners cannot take care of these tasks, they are all members - by law - of an Owners' Association. They elect a board, to which they entrust the responsibility for these common interests and pay a monthly sum, to financially enable these processes.

Everything concerning the apartment building is the sovereign decision of the apartment owners. However, some of these powers are vested in the management of the board. This is the vertical separation of powers. And this vertical separation means that the individual owners share sovereignty with the board. And that, taken together, is the essence of a federal organisation. Thus, the legal status is an association, the organizational status is of a federal nature.

The owners do not lose their sovereignty. Rather, they request a federal body to carry out certain tasks, namely, to take care of the common interests. Not only do the owners keep their sovereignty, but they also get extras, namely the knowledge that their common interests are being taken care of. Of course, the quality of that care depends on the quality of the board's administration, but should it prove to be unsuitable, a new administration may be chosen.

The board exercises sovereign control over these transferred powers. Imagine that after a few years the building's boiler needs to be replaced in the middle of winter

with a more energy-efficient new model. In that case the board can decide that on a certain day for a number of hours the building will be without heating. This is not a top-down hierarchical decision at the discretion of the administration, but rather a decision that can be traced back directly to the interests of the residents, based on the vertical separation of competences and therefore shared sovereignty.

When someone at the notary office signs the deed of purchase of an apartment, he receives a small book with the rights and obligations of apartment owners. For example, stating that one should not drill into walls after eight o'clock in the evening, or on Sundays. Or, when purchasing a sun protection system, it should be of a specific colour. We can regard these regulations as a 'Constitution' from which all members of the federal community derive their coherence and order. In short, the status of a condominium is a perfect example of a federal organisation.

5.3.3 The money on your savings account

Suppose you have a lot of cash in your home, under the mattress. You are the sovereign owner of that money. Very nice, but a lot of money in the house makes you vulnerable. A thief looks directly under the mattress and runs off with the money.

If it is white money, it would be wise to put it in a savings account. Then the money will no longer be in your home, however, you will not lose a single euro. It will remain yours. On top of that you will receive some extras. The money is better guarded in a bank than in your home. You will also receive a bit of interest. Should a financial crisis occur, then your money is safe (at least in the EU) up to 100,000 euro. As you know, your bank can invest your money, which is part of the vertical division of powers and therefore of shared sovereignty. You can choose a bank that invests in causes you find valuable, for example in fighting climate change. With all the savings accounts of their customers who want to promote a sustainability climate, the bank can make considerable results in this area. With your money under the mattress, you can't do that. This again, is operating in federal terms.

5.3.4 Your child to school

Those who take children to school create a federal circumstance. At the school they hand over the child to a teacher. This transfer does not mean that they lose the child. The child remains with the parents who will get it back later. It is a form of handing over in the sense of entrusting. The parents entrust some of their own powers to teach the child to the teacher. If the teacher misuses these powers, the parents can decide to take their child to another school. This is a federal way of dealing with each other. The parents do not lose sovereignty and even get

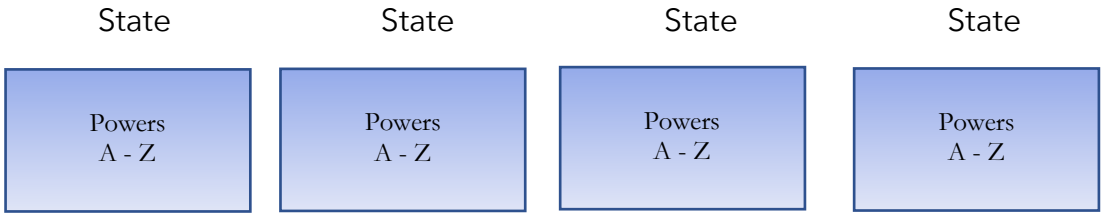
something extra, namely a child that has learned something that day, for example 1 plus 1 is 2.

5.4 Public federations: federal state building in drawings

With a few drawings we will now explain the construction of a federal statehood.

5.4.1 Federal statehood structure

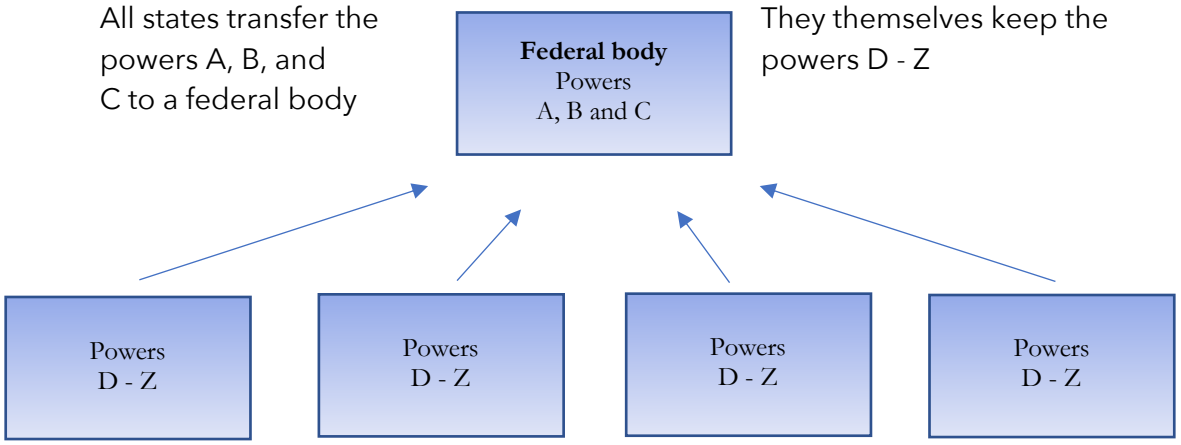
Below are four individual states. They all have sovereign powers A-Z.



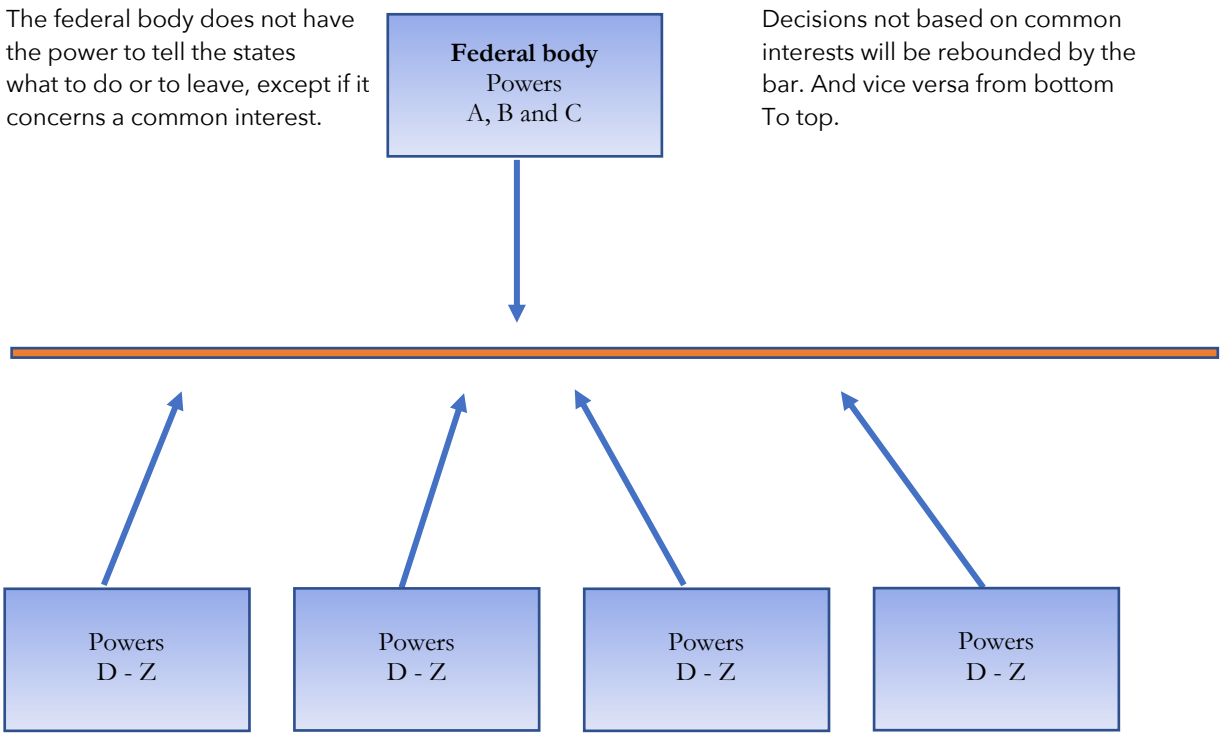
They realize that there are interests that they, as an individual state, cannot, or can no longer, take care of individually.

Traditional common interests are: a common defense policy and defense force, a common foreign affairs function. A recent interest manifesting itself in the European Union as communal interest is in the field of immigration. The 2003 Dublin Accord, establishing the principle that immigrants should be received by the country in which they first report, shows that Italy and Greece are collapsing under that burden, while some Eastern European countries refuse to cooperate in achieving a proportional distribution of immigrants across all EU countries.

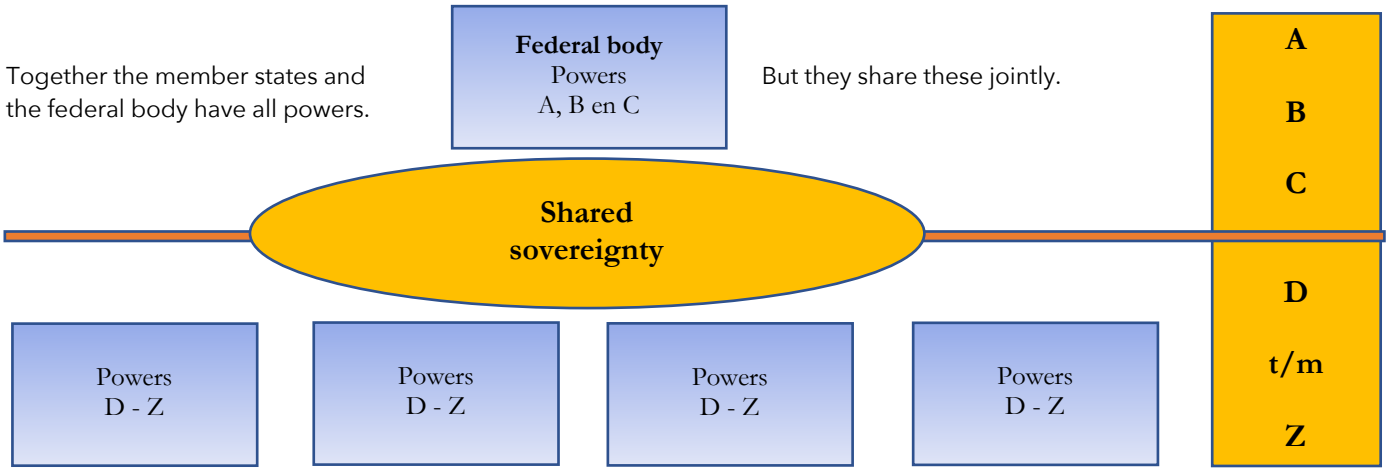
There are other common interests. Which policy area may or may not be considered as a field of common interest is a matter of political negotiation. Our draft federal constitution (see Chapter 6) has articles that elaborate on the number of common interests. Suppose that these four states no longer want or are no longer able to look after the aforementioned interests themselves but prefer to entrust responsibility for these to a federal body - in that case the drawing looks as follows.



The most important aspect of a federation is the vertical division of powers, as stated before: there will be a bar between the Member States and this federal body. This symbolizes that the federal body does not have the power to take any top-down hierarchical decisions that are not included in the limitative list of common interests entrusted to the federal body. Any decision that does not fall within a policy area of the limitative list of common interests meets this bar and bounces back. The reverse is also true: states cannot simply demand that the federal body does something that is outside their list of interests. See the bar in the drawing.



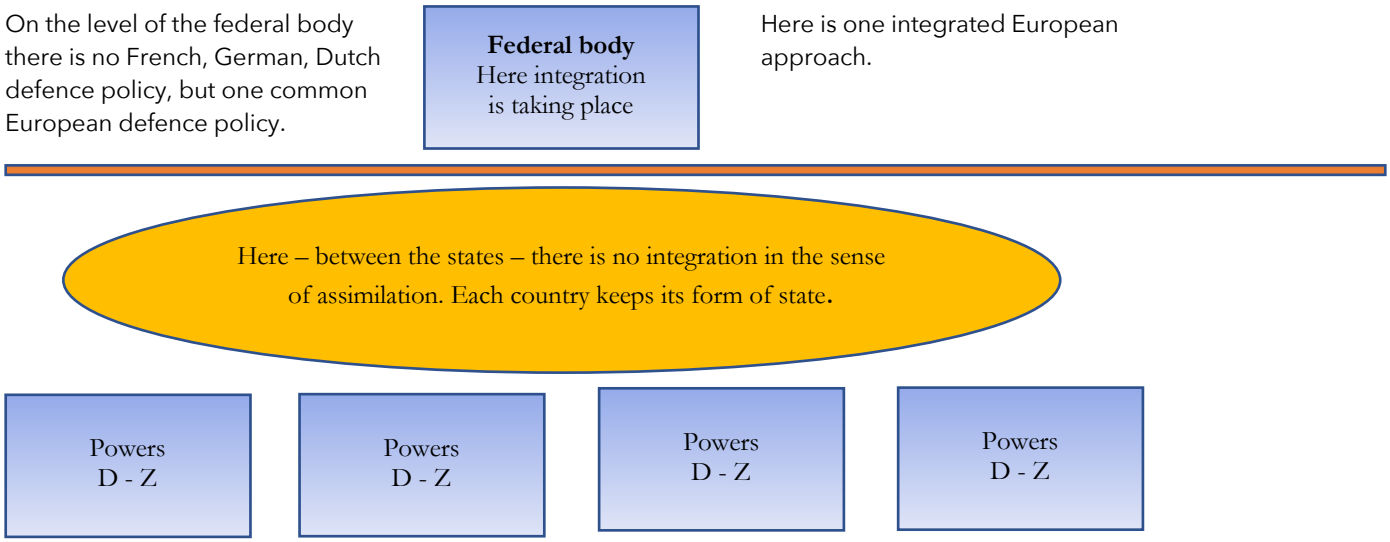
The following drawing shows the result of this vertical division of powers: shared sovereignty.



5.4.2 How does the concept of 'integration' fit in with this?

Avid supporters of the current European Union are constantly pleading for more 'integration'. With this, they mean that Member States should be in line with each other, as much as possible. As mentioned before, the call to integrate further is a task for countries to assimilate. That is to say: adapting to one another as much as possible and thus taking on each other's characteristics. This is one of the most important causes of conflict within the EU. Countries, parliaments, and peoples do not want to assimilate. Not only do they want to preserve their own sovereignty, but they also want to maintain their cultural identity. This need for further integration is one of the many systemic errors within the EU's current operating system. Such a system error is completely absent in a federal form of government.

Does this mean that the concept of 'integration' is not relevant at all? It is certainly relevant if you know where exactly in the federal operating system this relevance applies. That is, at the level of the federal authority. On that level national interests merge into European interests.



5.4.3 How does the concept of 'subsidiarity' fit in with this?

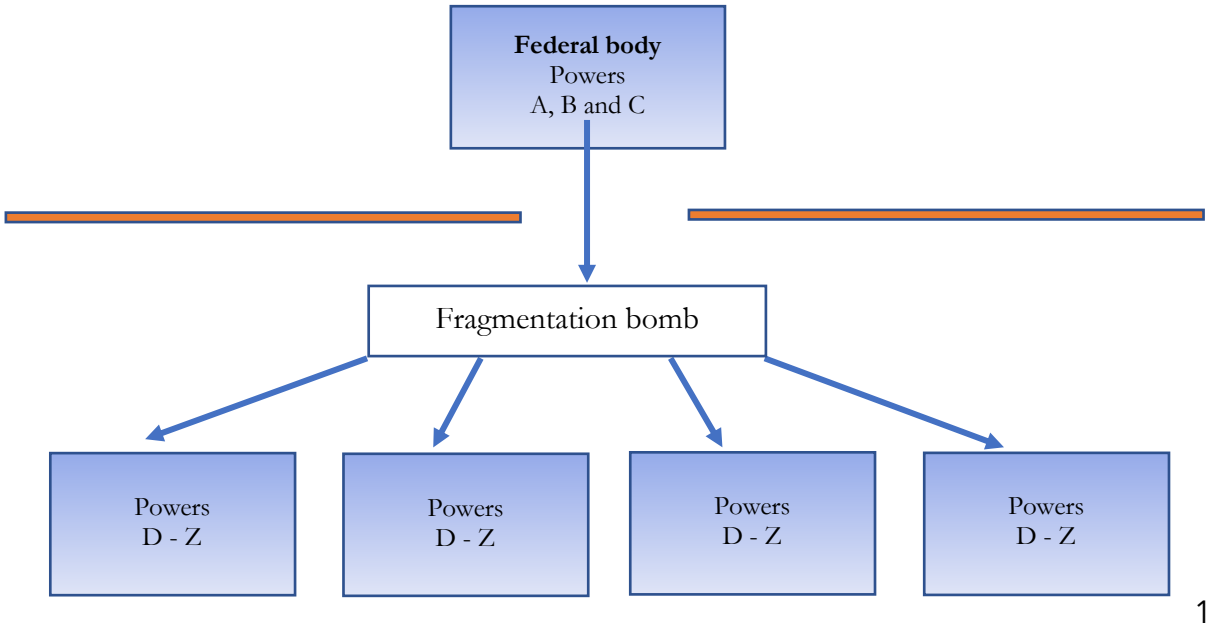
The answer is: 'nowhere'. And that, of course, leads to raised eyebrows. People who ask this question understand the essence and importance of 'subsidiarity'. But because they're usually unaware of the essentials of federalism, they think that subsidiarity should also be placed somewhere within the legal framework of federal statehood.

The principle of subsidiarity in Article 5 of the Treaty of Lisbon means that EU authorities must always consider in their decisions what Member States themselves

can do better or perhaps even best. However, this article does not work, which will be discussed in the next section. First, we should deal with the question: why does the constitutional basis of a federal organisation lack an article stating that the federation must respect the principle of subsidiarity? Well, such an article is absent because a federal organisation is the same as subsidiarity. The vertical separation of limitative powers, added to the bar that rebounds top-down hierarchical decisions falling outside of those powers, is the same as subsidiarity. In other words, the vertical division of powers and subsidiarity coincide. Saying that the principle of subsidiarity must be explicit in the federal constitution is like saying snow must be white. That is what it is by nature. So, one should not include it in a federal constitution. Avid supporters of the principle of subsidiarity are, in fact, complete federalists.
Another important EU interest that has become the EU's most important cornerstone over the years is a self-evidence within a United States of Europe. That is, the principle of the single market, comprising the four freedoms: the free movement of people, goods, factors of production (capital and labor) and services throughout the Union. So, two of the EU's important principles subsidiarity and the single market are automatically present in a federal state.

5.4.4 Why does 'subsidiarity' not work in the EU?

The Treaty of Lisbon which consists of two sub-treaties contains a list of subjects on which the European Union can take decisions. When we add this to the principle of subsidiarity leaving matters to the Member States themselves if regulation at that level is more effective this resembles the restrictive list of common interests to which a federal authority is confined. However, this is only an illusion. Article 352 of the Treaty of Lisbon contains a number of provisions which, in short, provide the European Council with the power to take any decision – by EU's directives - considered to be in the interest of the Union. As a result, a large gap in the bar is visible in the EU subsidiarity principle, as demonstrated in the next figure.



The European Council 'shoots' all decisions that it considers serving the interests of the Union as a whole through the hole in the bar, after which the Council aims at the Member States' precious national interests by unleashing a 'fragmentation bomb' causing these national interests to fall to pieces. This only serves to increase the general feeling of resistance towards compulsory country assimilation. Brexit is just one of the many symptoms of the European Union shooting itself in the foot[104].

Of course, there are Heads of State or Government for example, Emmanuel Macron (France) and Mark Rutte (the Netherlands) who argue in favour of concentrating EU policies on a limited number of key interests, as a type of limitative list. But apparently, they're not aware that by doing so, they are advocating a federal organization of the EU. If you told them that, they would run away.

Since the Lisbon Treaty is only the sum of national interests, with conflicting rules and national exceptions to general regulations (the notorious opt-outs), it cannot function as a solid constitutional foundation for a handful of common interests. What is more, if Macron were to have his way (as advocated in his Sorbonne speech of September 2017), of adapting the Treaty of Lisbon to this end with yet another, new treaty, the typical conceptual impurity with which France has been dealing with federalism over the years, then the EU's administrative chaos will only increase, and its disintegration will come closer. Only a federation with a constitution establishing vertical separation and thus shared sovereignty can take care of this interest, as proposed by Macron and Rutte. Leading European politicians should know this. Statesmen would act accordingly.

5.4.5 Aspects of some federations in Europe

Europe has already four federal states: Germany, Switzerland, Austria, and Belgium. Although the Swiss constitution contains the word 'confederation', it has been a genuine federation since 1848, with the layered structure from the bottom (cantons) upwards. Although Switzerland does not belong to the European Union, it is member of the Schengen Treaty and has economic commitments (free trade agreements) with the European Union. Switzerland has also incorporated parts of

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[104] The same seems to be true of the UK, at least from an economic point of view. In this video (12 February 2021), Brendan Donnelly, Director of the Federal Trust, describes the economic disruption caused by Brexit, especially in Northern Ireland. He criticizes what he sees as attempts of the British government to rewrite the Northern Ireland Protocol. It undermines trust: https://www.youtube.com/watch?utm_source=The+Federal+Trust+for+Education+%26+Research&utm_campaign=de4125769c-EMAIL_CAMPAIGN_02-12-2021&utm_medium=email&utm_term=0_6f089cf39a-de4125769c-1292886954&ct=t%28EMAIL_CAMPAIGN_02-12-2021%29&v=9YGAKn1Colo&feature=youtu.be

EU-legislation into its own legal system through bilateral agreements and is thus closely linked to European laws. Examples include land, air and passenger traffic, trade and agricultural products, banking, and the relationship with the Dublin immigration agreement.

Another interesting point is the rebuttal of one of the claims by which anti-federalists try to prove that Europe can never become a federation. The claim being that to be able to achieve a federation, you need one nation with one language. That is nonsense. The small country of Switzerland hosts no less than four different cultures; constitutionally, four official languages are recognized: German (63%), French (20%), Italian (6%) and Reto-Romanesque (0.5%).

In Germany, about 95% of the population speak official German, but there are also other languages, partly regional, partly coming from immigrants. Federal Belgium officially recognizes three languages: French, Dutch, and German. Federal India with twenty-nine states the largest democracy in the world constitutionally recognizes no less than twenty-two official languages. In addition, India has about seven hundred regional languages and dialects.

Belgium deserves a few special comments. After liberating itself from the northern Netherlands in the 1830s, the French language and culture were dominant. The Dutch-speaking Flemish people were subordinate to this, especially in an economic sense. Management positions in companies and governments were exclusive to French speaking persons. After the First World War with many Flemish soldiers dying who did not understand the French orders turbulent movements arose with a view of breaking away from the Walloon part of Belgium. After the Second World War, this resistance increased and from 1960 onwards, Belgium took the initiative with six daring constitutional and institutional reforms to convert its decentralized unitary state into a federal state. In this way, it was possible to give the two primary parts of the state Wallonia (French speaking) and Flanders (Dutch speaking), but also the small German-speaking part their own sovereign foundations, enabling them to coexist peacefully. This is an unprecedented achievement. Spain, with its autonomous regions, from which Catalonia and the Basque country would prefer to separate, the United Kingdom, with its devolution (Scotland, Wales, and Northern Ireland each have their own political institutions), Ukraine, with its East, West and Crimea parts, Israel, with its Jewish and Palestinian parts[105], and Cyprus, partly Greek and partly Turkish, can all learn from the Belgian example.

[105] In July 2018, the Israeli Parliament adopted a law defining Israel as a Jewish nation state with Jerusalem as its undivided capital. As a consequence, the Arab Israelis, who make up about 20% of the population, can no longer consider Arabic as their official language. This decision is at odds with the original objective as pursued by the founders of Israel at the end of the 1940s, namely

However, the Belgian Federation is not complete yet. There will be a new political intervention. One problem being that federalization has been carried out from the top to the bottom: many of the powers of the original central authority have been divided among the federal regions, whereas at the central government level the joint composition has been maintained. So, X Walloons and Y Flemish. And that's the problem. At the level of the federal government, one should only see Belgians because the concept of 'integration' applies there, on that level of the federation.

To conclude, a final aspect of Belgium should be mentioned. The policy area of Foreign Affairs takes place at the federal level. However, the federal parts of Wallonia and Flanders are still allowed to pursue their own foreign policies. As is the case in some other federations, they are empowered to conduct their own foreign policy on subjects that do not belong to the federal level.

Germany is undeniably the strongest federation in the European Union. This fact alone should by now have led to the decision to transform the European Union into a federal community. However, it also seems that Germany is not anxious to see a federal Europe come into being.

5.4.6 Are all federations the same?

In any case, all federations must comply with a standard of fixed characteristics in order to be entitled to be a federation. However, they may differ in some respects. Leo Klinkers and Herbert Tombeur explain in the 'European Federalist Papers' how federations can differ from one another. In short:

- In most federations, the Länder, Member States, provinces, regions, or whatever part of the federation is called have the same competences. This is for example the case in the United States, Switzerland, and Germany. For this reason, these countries are seen as the strongest forms of federalization. In other federations, for instance Russia and Belgium, the parts are not all the same. For example, the German-speaking region of Belgium, due to its small size and limited number of inhabitants, does not have the same powers as Wallonia and Flanders.

- Some federations are very strict in applying the vertical separation of powers. The competences of the federal body are not mixed with those of the parts. In other federations, a form of cooperation between the Federal body and the Member States on certain subjects has been regulated. This might be a source

equality and coexistence of Jews and Arabs. It is also a huge step backwards when considering the attempt to turn Israel into a two-state country, comparable to the status of federal Belgium.

of conflict between the Federal body and the other parts of the federation. If the fields of cooperation are not properly regulated, this may result in both parts having the same competences on exactly the same issues. For example: if you are allowed to decide for yourself when to take a holiday and for how long, but your boss has exactly the same authority with regards to your holiday, then there is a source of conflict. This so-called 'sharing of powers' is completely wrong.

- The way in which a federation is created can also be different. The United States of America were built from the bottom up, while Belgium was formed from the top down. This highlights the way in which constitutional provisions affect the institutional elaboration. An American example: when, in the course of 2018, President Trump withdrew from the Paris Climate Agreement, the state of California declared itself not bound by it. The American federation is built on the basis, the states. And they do not allow themselves to be deprived of their autonomy by a federal president who is in disregard of the Constitution.

5.4.7 So, why should we want a federal Europe?

Federalism is a source of four things that people generally appreciate. In the first place it makes something disappear that we (almost) all want to see disappear, namely bloody nationalist-driven wars. Secondly, it gives us back something that was destroyed by the advent of intergovernmental control systems after the Second World War, namely sovereignty at home. Thirdly, federalism is the best constitutional and institutional foundation for democracy, for European citizenship and for European prosperity and security. And fourthly, as a United States of Europe will no longer be a pawn in the game of the geopolitical powers, but rather a centre of power in the evolution towards a multipolar world order.

We know the United States of America as a large and powerful country. It is powerful thanks to its federal structure, but is it also large? The following table lists the states of the EU and the US in terms of population, from large to small. What does it look like? The United States have considerably fewer inhabitants than the EU. California the largest American state in terms of inhabitants is ranked 6th and is more than half the size, in population terms, of Germany. There are seven American states with a population exceeding ten million, against ten such states in the EU.

Countries of the EU and States of the USA in terms of population (> 10 million)
Source: US/Census Bureau (2017); Eurostat (2018)

Country/State	Population *1.000	EU/USA
Germany	82.521	

France	66.989	
United Kingdom	65.808	
Italy	60.589	
Spain	46.528	
California	39.536	
Poland	37.972	
Texas	28.304	
Florida	20.984	
New York	19.849	
Romania	19.644	
Netherlands	17.081	
Pennsylvania	12.805	
Illinois	12.802	
Ohio	11.658	
Belgium	11.351	
Greece	10.768	
Czech Republic	10.578	
Georgia	10.429	
Portugal	10.309	
North-Carolina	10.273	
Total EU 28	511.522	
Total VS	325.719	

From this point of view, the US is not large at all. If you imagine the EU being governed on the basis of a federal constitution and being able to develop decisiveness, then America will simply be Europe's little brother. This statement is supported by the following strengths of today's Europe.

The European Union is:

- The world's largest economy.
- The world's largest trading bloc.
- The world's largest exporter of manufactured goods and services.
- The world's largest importer of manufactured goods and services.
- The world's largest exporter of agricultural and food products.
- The world's largest research programme into new scientific discoveries.
- The world's largest aid donor to poor countries.
- The world's largest investor and recipient of direct foreign investment.
- The world's largest civilian robotics programme.
- The world's largest producer of scientific publications.
- The world's largest number of science graduates.

- The world's largest wind farm market.
- The world's largest number of commercial seaports.
- The world's largest merchant fleet.

If the EU becomes a federal state, we will retain that lead. We can even develop it even further. But if we are not prepared or able to establish a federal Europe, we will lose that lead. If only because Europe due to its increasing administrative problems will be the victim of uncontrollable geopolitical shifts.

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6. THE DRAFT FEDERAL CONSTITUTION FOR EUROPE[106]

6.1 Introduction

The mandate of the Citizens' Convention, to be discussed in Chapter 7, is to improve our draft federal constitution for Europe. Once that has been achieved, that Convention will submit the improved draft to the people of Europe. On the basis of the adage 'All sovereignty rests with the people', the people are responsible for ratifying the constitution. This makes the constitution of, by and for the people.

The text of our draft is in 6.2. The federal constitution of the United States has served as a best practice model. But this constitution for Europe has been adapted to European views. It also contains elements of the Swiss Federal Constitution.

The American one is a model of excellent lawmaking: only generally binding rules. No exceptions - opt-outs - as is the case in the Lisbon Treaty. That is why the American version contains only seven articles. The European version has ten because some articles have been functionally split and because we have added elements.

Essential to the mandate of the Citizens' Convention is the condition that no improvement of this draft may lead to the number of ten articles being exceeded. The reason is simple: it is a disease of the EU intergovernmental system to regulate on the basis of national interests of Member States. Not European interests. As soon as you include specific national interests in a regulation on European interests, the regulation will be filled with national political folklore of - again - hundreds of articles. This federal constitution for Europe is not only intended to make clear how a federal constitution should be structured, but also what correct constitutional law looks like.

The American constitution did not contain an Explanatory Memorandum. Our European draft does. See 6.3.

6.2 The text of the federal constitution

PREAMBLE

We, the citizens of the states [here a list of participating states],

[106] The draft of this Federal Constitution for the United States of Europe was written by Leo Klinkers and Herbert Tombeur in 2012-2013. After 2013, it was improved several times by Leo Klinkers, including a new Preamble and the addition of anti-corruption rules.

I. Whereas
(a) that the federation of the United States of Europe hereby established by us has the task and duty to support us as citizens in our search for happiness in freedom;
(b) that it should support our quest for happiness, based
- on working restlessly to preserve the diversity of all life forms on Earth,
- on unconditional respect for the diversity of sciences, cultures, ethnicities, and beliefs of the citizens within the federation,
- and on human compassion for citizens from outside the federation who want to find their happiness within the United States of Europe;
- that in carrying it out, it should bear witness to wisdom, knowledge, humanity, justice, and integrity, in the full awareness that it derives its powers from the people, that all people on earth are created equal, and that no one is above the law.

II. Considering further:
(a) that this federal Constitution is based on the wealth of thoughts, considerations and desires of European philosophers - and of European political leaders after World War II - to unite Europe in a federal statehood;
(b) that the federal system is based on a vertical separation of powers between the member states and the federal body through which the member states and the federal body share sovereignty;
(c) that the horizontal separation of the legislative, executive and judicial powers (trias politica) both at the level of the federal body and at that of the member states is guaranteed by a solid system of checks and balances.

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

Adopt the following articles for the Constitution of the United States of Europe,

Article I – The Federation and the Bill of Rights
1. The United States of Europe is formed by the Citizens and the States, participating in the Federation.
2. The powers not entrusted to the United States of Europe by the Constitution, nor prohibited to the States by this Constitution, are reserved to the Citizens or to the respective States.

3. The United States of Europe accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and to the Charter of Fundamental Rights of the European Union.
4. The articles in both Charters on freedom of expression and the freedom of the press also include the freedom to acquire and receive information and also to otherwise provide oneself with the expressions of others. These freedoms are covered by the Open Access to Public Documents Act, which contains provisions on the right of access to public documents.

Article II – Organization of the Legislative Branch

Section 1- Setting up the European Congress

1. The Legislative Branch of the United States of Europe lies with the European Congress. It consists of two Houses: the House of the Citizens and the House of the States, also known as the Senate.
2. The European Congress and its two separate Houses reside 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 United States of Europe. 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 who are qualified to vote, united in one constituency, being the constituency of the United States of Europe. The election of the members of the House of the Citizens always takes place in the month of 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 of May in the final year of their term. They can be re-elected twice in succession.
2. Subject to rules to be established by the House of the Citizens on requirements of competence and suitability for the office of representative on behalf of the people of the United States of Europe, are eligible 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 a 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 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 of 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. Subject to rules to be established by the Senate on requirements of competence and suitability for the office of representative on behalf of the States of the United States of Europe, are eligible as Senator those who have reached the age of thirty years and who have been registered for a period of at least seven years as a Citizen of a State of the United States of Europe.
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 United States of Europe 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 United States of Europe. 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 United States of Europe. 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 United States of Europe. 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 United States of Europe. 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 United States of Europe 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 United States of Europe;
b. to borrow money on the credit of the United States of Europe;
c. to regulate commerce among the States of the United States of Europe and with foreign nations;
d. to regulate throughout the United States of Europe uniform migration and integration rules, what rules will be co-maintained by the States;
e. to regulate uniform rules on bankruptcy throughout the United States of Europe;
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 United States of Europe;
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 United States of Europe 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 United States of Europe and its States

1. No taxes, imposts or excises will be levied on transnational services and goods between the States of the United States of Europe.
2. No preference will be given through any regulation to commerce or to tax in the seaports and air ports of the States of the United States of Europe; 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 United States of Europe; 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 United States of Europe[107]

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 United States of Europe will be published yearly.
2. No title of nobility will be granted by the United States of Europe. No person who under the United States of Europe 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.
3. No personnel, whether paid or unpaid, of the government, government contractors or entities receiving direct or indirect funding from the government shall set foot on foreign soil for the purpose of hostilities or actions in preparation for hostilities, except as permitted by a declaration of war by Congress.
4. No person or entity, whether living, robotic or digital, may contribute more than one day's wages of the average U.S. laborer to a person seeking elected office in a particular election cycle, in currency, goods, services or labor, whether paid or unpaid. Anyone seeking an elected position that accepts more than this amount in any form, and anyone who seeks to circumvent this statutory limit on campaign contributions, will be barred from holding office for life and will serve a minimum term of imprisonment of five years.
5. No person or entity that has directly or indirectly received funds, favors or contracts from the government during the last five years may contribute to an election campaign under the sanctions described in paragraph 6. In addition, any entity seeking to circumvent this limitation shall be fined five years of its annual turnover, payable on conviction.
6. Any contribution, whether direct or indirect, in cash, goods, services or labour, whether paid or unpaid, made to a person seeking elected office must be made public within forty-eight hours of receipt. The contribution from each entity must bear the name of the person or persons responsible for managing the entity. An entity seeking to circumvent this limitation shall be fined five years on an annual basis, payable on conviction.
7. No individual shall spend more than one month of the average monthly wage of the average worker on his own campaign for an elected office. Anyone wishing to circumvent this statutory limit on campaign contributions will be barred from holding office for life and will serve a minimum sentence of five years imprisonment.

[107] Clauses 3-9 of Article III were added by Leo Klinkers, taken from Charles Hugh Smith, *10 Common- Sense Amendments to the US Constitution*, 21 February 2019.

8. No government employee may accept a position in a private entity that has accepted government funding, favors or contracts for a period of ten years after leaving the government office during the last five years.
9. Every institution and agency of government, and every entity or person that has directly or indirectly received government funding, favors or contracts, will be subject to an independent audit every four years, and the results of these forensic audits will be made public on the date of their issue. Any entity attempting to circumvent or avoid this requirement will be fined five years in revenue, payable in the event of a conviction. Any person seeking to circumvent or avoid this requirement must serve a minimum term of imprisonment of five years.

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 United States of Europe. 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 United States of Europe, 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 United States of Europe will be held on the third Friday in the month of October; the first election in the year 20XX. To bridge the period between ratification of the Constitution of the United States of Europe 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 United States of Europe.
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 United States of Europe 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 United States of Europe, 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 United States of Europe and shall to the best of my ability preserve, protect and defend the Constitution of the United States of Europe.

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.

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 United States of Europe.
2. He/she appoints Ministers, Ambassadors, other Envoys, Consuls and all public officials of the executive branch of the United States of Europe 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 United States of Europe 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 of Europe, 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 United States of Europe 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 United States of Europe with the right to vote on the question of whether or not the United

States of Europe 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 United States of Europe 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 of 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 United States of Europe.

Article VI – The Judicial Branch

Section 1 – Organization

The judicial power of the United States of Europe 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 proper. 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 United States of Europe; to treaties made, or that shall be made under the authority of the United States of Europe; to all cases affecting Ambassadors, other Envoys and Consuls; to all cases of a maritime nature; to all cases in which the United States of Europe 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 or 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 United States of Europe 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 United States of Europe also possess the Citizenship of the United States of Europe 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 United States of Europe 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 be 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 decide 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 decide 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 again be dealt with 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 United States of Europe 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 United States of Europe 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 United States of Europe 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 United States of Europe takes note of this consent and acts accordingly.
4. States joining the United States of Europe 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 United States of Europe 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 United States of Europe 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 United States of Europe 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 United States of Europe.

Article VIII – Changing the Constitution

The European Congress is authorized to propose amendments to 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 following ratification by three quarters of the Citizens of the United States of Europe, 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 United States of Europe, which will be made in connection with the Constitution, and all treaties, made or to be made under the authority of the United States of Europe, 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 United States of Europe 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 United States of Europe.

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 United States of Europe.
2. The ratification by a simple majority of the Citizens of nine States of Europe will be sufficient for this Constitution of the United States of Europe to come into force.

6.3 Explanatory Memorandum of the Preamble

The preamble 'We, the citizens of the states ...' shows that this Constitution is ratified by the Citizens themselves. It is thus of, by and for the Citizens of the United States of Europe, in accordance with the adage 'All sovereignty rests with the people'.

The United States of Europe' consists of the Citizens, the Member States and the Federal Authority.

It is a Constitution, not a Treaty. When countries or regions want to live together in peace and have to cooperate through historically determined borders, but nevertheless want to retain their autonomy and sovereignty, a federation is the only form of state that can guarantee this. This is not possible with a treaty. A treaty is an instrument for administrators to cooperate in policy areas without regular democratic accountability for the decisions they make.

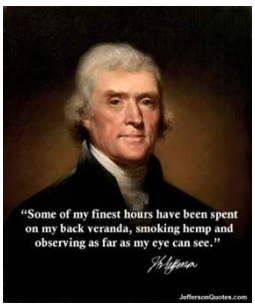
The fact that this Constitution is first ratified by the Citizens and only then by the parliaments of the Member States indicates that - in accordance with the elementary aspects of federalism formulated by Johannes Althusius in his Political Method around 1603 - it is established from the bottom up and not imposed from above.

This federal Constitution guarantees the common interest of the Citizens of the United States of Europe and leaves it to the Citizens of the Member States, and to the Member States themselves, to serve their own interests.

That is why this federal Constitution consists of a limited number of rules of a general binding nature. There are no exceptions - driven by national interests - to these generally binding rules.

Explanation of Consideration Ia

The word 'happiness' is not in the Preamble of the American Constitution. We included it in our Preamble. Why? Because the overall meaning of the American Constitution is based on the right of Citizens to pursue their happiness and the duty of government to help them do so. This basic feature of that Constitution derives from the Declaration of Independence drafted by Thomas Jefferson in 1776, which states, among other things:



"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."

As an aside, in the Preamble under Ib we have changed the words 'all men' to 'all people'. An overly literal interpretation of the word 'men' might suggest that 51% of the population, women, would be excluded.

By explicitly mentioning the word 'happiness' in the European Preamble, we want to make it clear that the right of every citizen to pursue his own happiness, and the task of governments to help that citizen do so, is an essential aspect of our federal Constitution. By enshrining this inalienable right in the Preamble, it should be clear to every Government within the European federal system that the realization of this right may not depend on elections. This construction gives an extra legitimacy to the making of a Preamble: whatever Parliament or Government there will be, these are the goals that every public authority has to aim for.

With the last sentence of the Preamble ('acceptance and tolerance of ...') we want to emphasize that a multicultural debate in the pursuit of a federal Europe is wasted on us. Ever since the Batavians, Gauls, Goths, Huns, Saxons, Franks, Moors, Celts, Romans, Habsburgs, and Vikings have roamed Europe, this continent, and every state within it, has been, and still is, multicultural. And that is good. That is Europe's strength.

A federal state recognises a European cultural identity with respect for the diversity of cultural identities within Member States. For example, Gerard Mortier says in an interview with the Belgian newspaper De Tijd:

> "We are all part of one big cultural community. (...) The time of nation states is over. (...) The European identity exists, throughout history. It is a reality, not an invention of the European Commission or the European Parliament. Only: why do politicians have such a hard time explaining this European cultural identity? (...) European cultural identity does not destroy local identity. After all, the Langue d'Oc did not disappear by becoming part of France. The many different cultures can even express themselves better in this European federation."

Explanation of Consideration Ib
In the first place, this consideration gives the federation the task of working restlessly to preserve the diversity of all life forms on Earth. Unsuccessful preservation of the diversity of all forms of life threatens human life on Earth. This task requires maximum cooperation, expertise, and reliability within the federation's authorities.

Secondly, the federation has maximum respect for diversity in social life. Wherever it disappears, monocracies are created, condemning parts of society to inbreeding. Diversity of sciences, cultures, ethnicities, and religions creates new sciences, cultures, ethnicities, and religions. This Constitution therefore rejects any

agitation aimed at protecting the so-called 'own people first' and will use all legal means to combat such agitation.

Thirdly, as a consequence of the above, this Preamble explicitly indicates that there is no room for a slogan like 'Europe first'. The Federation of the United States of Europe shares its place on Earth with all other peoples and does not lock itself up behind the walls of a 'Fortress Europe'. Closing the external borders for the purpose of protectionism of one's own people is not listed in the list of crimes against humanity, but nevertheless has a serious penalty: the eventual disappearance of what one wishes to preserve. In other words: open external borders, not closed borders. That creates obligations:

- To design and implement plans such as the Marshall Plan (1948-1952) to support poor countries in their economic development in order to eliminate the need to flee to Europe.

- With immediate effect, to provide a humane existence for the approximately eighty million refugees that are wondering on earth.

- To strengthen the demographic and geopolitical position of Europe by offering immigrants a secure existence within the Federation with wisdom, knowledge, humanity, justice, and integrity.

- Considering the implementation of this as one of the common interests of the federation.

This Constitution is therefore a task and an opportunity for fundamental political renewal now that post-war democracies have come to the end of a seventy-five-year life cycle and have led to the exclusion of citizens in favour of treaty-based governance which, by its very nature, has become increasingly oligarchic and protectionist.

A quotation by Robert Michels:

“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.”

Explanation of Consideration Ic

The foreseeable end of the political life cycle of post-war democracies, as just mentioned, places those countries that seek to protect democracy on a 'tour de force', comparable to the revolution of the Enlightenment. Democracy and the representation of the people must be reinvented on the basis of the principle of 'All sovereignty rests with the people'.

The Treaty of Lisbon should give way to a Constitution that takes representation of the Citizens as its starting point. This implies, among other things, the abolition[108] of the European Council of Heads of Government and State, the creation of a European Parliament based on proportional representation within one constituency - the territory of the Federation - and an executive government led by a President elected by the Citizens. Thus, equipped with a democratic mandate.

That can only succeed with wisdom, knowledge, humanity, justice, and integrity. With only two certainties: if it succeeds, it is a crucial revolution for the preservation of Europe. If it fails, by the end of this century, after the last tribal war in Europe initiated by nation-state anarchy, someone will turn off the light in Europe.

Democracies cannot prevent elections from leading to groups within democratic institutions that wish to use their power against democracy. This Constitution enables the institutions of democracy as much as possible to deal with abuses of democratic procedures by building in defence mechanisms[109]. The task is therefore a fundamental reorientation of the concept of democracy in 21st century Europe. With a task for transnational political parties (see Chapter11) to consider their own responsibility to devise instruments to defend democracy against parties that abuse (or would like to abuse) the procedures of democracy in order to destroy that democracy. Probably more than any other organisation within a democratic system, political parties will have to reflect on wisdom, knowledge, humanity, justice, and integrity in order to ensure the viability of a federally united Europe. Chapter 11 adds a revolutionary element to the exalted role and task of transnational political parties.

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[108] The reason is explained by Thomas Jefferson: "Leave no authority existing not responsible to the people." Of all the non-democratic aspects of the EU, the European Council is the most serious error because this body, which is in charge of final decision making in the EU, is not fully accountable to a real parliament.

[109] See Matteo Laruffa, The Institutional Defences of Democracy, 'The institutional defences of democracy'. See also Democracy Without Borders: democracywithoutborders.org.

Explanation of Consideration IIa
The 'building blocks' of federalism as a state institution originate from the Political Method of Johannes Althusius (1603). The 'cement' to inextricably connect these 'building blocks' was supplied in the writings of European political philosophers such as Aristotle, Montesquieu, Rousseau, and Locke with their views on popular sovereignty and the doctrine of the trias politica. The American federal Constitution is based on these writings, while Europe condemned itself to waging wars for centuries.

Not only philosophers provided the 'cement' for the building blocks of federalism. Also, political, and social leaders - in the Interbellum period, for example the British Philip Kerr, better known as Lord Lothian - and after the Second World War the Italian Altiero Spinelli who, with his Ventotene Manifesto (1941), laid the foundation for the post-war pursuit of federalism. Between 1945 and 1950 this aspiration was led by a large number of conferences and plans led by statesmen, scientists, cultural figures, and civil movements. But in 1950 it radically ceased with the 'Schuman Declaration'. Although the Declaration fully demanded the creation of a federal Europe, it placed its elaboration in the hands of government leaders. In this way - unintentionally, but through guilty ignorance of how to make a federation - the treaty-based intergovernmentalism that is taking the European Union to the end of its current political life cycle was created. This seems a good place for a quote from Thomas Jefferson in a letter to Roger C. Weightman on 24 June 1826:

> "May it be to the world, what I believe it will be, (to some parts sooner, to others later, but finally to all,) the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government."

Explanation of Consideration IIb
The thirteen former American colonies in late 18th century solved the dilemma of 'never again a ruler versus the need to represent the people'. They applied the system of shared sovereignty devised by Althusius by inventing the vertical separation of powers between sovereign States and a Federal body. Without sacrificing the integral member state sovereignty, they asked a federal body to take care - with the powers of the Member States - of a limitative number of common interests.

Contrary to the assertion that, in a federation, member states transfer all or part of their sovereignty in the sense of 'giving away and thus losing', this is not the case. Member states entrust some of their powers to a federal body for taking care of a limited array of common interests. A federation is not a superstate that destroys the sovereignty of the member states.

The vertical separation of powers, leading to shared sovereignty between the federal body (operating for the whole) and the member states, also solves another problem. Namely the principle of subsidiarity. This principle in the Lisbon Treaty states: 'The authorities of the European Union should leave to the Member States what the Member States can do better themselves'. Because Article 352 of the Treaty allows the European Council to take any decision that, in the Council's view, serves the Union's objectives, the Council can ignore the principle of subsidiarity. In federal statehood, this legal pitfall is absent. In a federation the subsidiarity principle coincides with the vertical separation of powers and therefore does not need to be mentioned as such in the articles of the Constitution.

A final aspect of this Consideration IIb implies that - because of the restrictive set of powers of the federal body - all other powers remain with the Citizens and the Member States. This implies, inter alia, that the member states retain their own Constitution, parliament, government, and judiciary, including their own areas of policy, in so far as these are not defined by the vertical separation of powers in the exhaustive list of interests that the federal body is required to represent on behalf of the member states. Any monarchies will also be maintained.

Explanation on Consideration IIc
The horizontal separation of the three powers - the legislative, the executive and the judiciary - is not a specific feature of just a federal state form but serves as an adage for any state that wants to prevent domination by one power. Within a federation, however, there are two peculiarities.

Firstly, from the first federal state - that of the United States of America - the trias politica must be established both at the level of the federal body and at the level of the individual member states. Secondly, in addition to the invention of the vertical separation of powers mentioned above, the federal Constitution of the United States of America has introduced a second innovation: the checks and balances. Saying that a self-respecting state must consider the trias politica high is merely expressing a value. But values can only be guarded and preserved by means of norms. That is why the American Constitution - and also this European Constitution - contains articles that prevent the inevitable action of the three powers in the field of another power from slipping into the supremacy of one power over the other. To that end, there are the checks and balances. They are the indispensable countervailing powers to curb the ever-present ‘desire’ for the three powers to expand their complex of powers at the expense of the powers of the others.

Explanation of Consideration III
Citizens derive from the English Magna Carta of 1215, the Dutch Placard of

Abandonment of 1581, the American Declaration of Independence of 1776, and the French Revolution of 1789 the inalienable right to depose governments from the federal body if they violate the provisions under I and/or II.

In accordance with the adage 'All sovereignty rests with the people', the cCtizens of the United States of Europe are the federation's alpha and omega. Alpha in the sense of: they ratify the federal Constitution and thus establish a system of representation of the people, of executive governance based on political decision-making by the representative body and jurisdiction to settle disputes. Omega in the sense of the inalienable right to dismiss those who unexpectedly abuse the federal system, for example by (attempts to) establish autocracy of a leader who wants to operate above the rule of law.

6.4 Explanatory Memorandum of Article I: The Federation and the Bill of Rights[110]

Explanation of Clause 1
Here we take inspiration from the American and Swiss Constitutions. The text of the first Clause defines the specific nature of a public federation: it consists not only of States, but also and especially of their Citizens; a Federation is of the Citizens and of the States. For all those who fear that a Federation, as a purported superstate, would absorb the sovereignty of the participating nation states, it should now be clear that within the United States of Europe the States remain: France remains France, Estonia remains Estonia, Spain remains Spain, et cetera.

And there is more: by explicitly naming the Citizens as co-owners of the Federation, there is a constitutional mandate to consult them on proposed changes to the territory of the Federation. A right that the European Citizens have not yet received under the Lisbon Treaty: a form of direct democracy. We address this right in Article VII of our draft.

The States are represented alongside the Citizens at the federal level of government. Their representatives have an individual mandate. They do not act in the name and on behalf of the political institutions of their State. This important principle in the functioning of the Federation is addressed in the organisation of the European Congress consisting of two Chambers.

[110] The following Explanatory Memorandum to the draft federal constitution for the United States of Europe was originally written by Leo Klinkers and Herbert Tombeur in their European Federalist Papers (2012-2013): https://www.faef.eu/the-european-federalist-papers/

Explanation of Clause 2

Immediately after the American Constitution came into force, the need for a Bill of Rights became apparent. This came in the form of ten Amendments to the Constitution. Amendments 1-9 contained the fundamental rights themselves. So, we have now incorporated them into Article I, Section 3. The Tenth Amendment

(proposed by James Madison and adopted on 15 December 1791) had a different, more state-like character, by explicitly reaffirming the federal state system. We think it is important to record this here in Clause 2 of Article I. It makes clear that the European Federation has a non-hierarchical vertical division of powers. Both the Federal and Member State authorities are sovereign in those matters assigned by the Constitution to both levels of government. In the sense that the Federation is assigned powers for a number of limited policy areas, no others. For lovers of historical best practice from the end of the 18th century, this principle of the vertical separation of powers was already laid down in the first ten days of the Philadelphia Convention and further elaborated in a draft Constitution a few weeks later. It constitutionally establishes that the Federal Authority cannot exercise any hierarchical power over the States.

Those familiar with the Treaty of Lisbon, and more specifically with the partial treaty under the name 'Treaty on European Union', may ask 'What's new'? After all, that Treaty on European Union stipulates in Article 4(1): 'In accordance with Article 5, powers not conferred on the Union in the Treaties shall be conferred on the Member States'. This looks like two drops of water on our Article I, Clause 2.

But appearances can be deceptive. The subsequent Article 5 of that Treaty states that the delimitation of the Union's competences is governed by the principle of conferral. There are two aspects to this principle:

- Whether the Union has power to act is determined by the principles of subsidiarity and proportionality; that is to say, in short, the Union may act decisively in cases which the Member States themselves (or their component parts) could not (better) take care of; in other words, the principle of subsidiarity (leave to the States what the States themselves can best do) is not absolute, but relative.

- In the other part of the Lisbon Treaty - namely the 'Treaty on the Functioning of the European Union' - there are some articles that give a concrete list of the competences of the Union. But those articles are partly hierarchical in character, especially in the group of shared competences - these are competences allocated to both levels of government, but where the Union,

when acting, obliges the Member States to conform to them. This does not exist in a Federation.

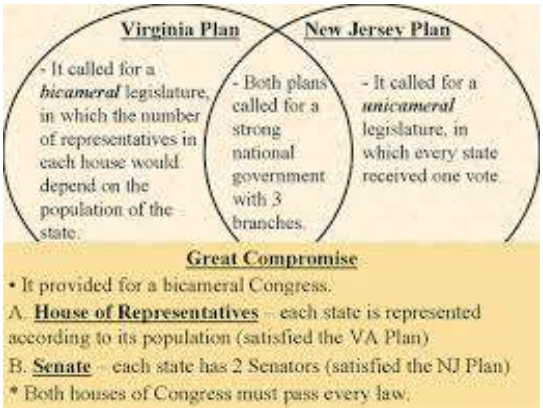
As if all this were not enough, there are also subsidiary competences available to the Union, granted in Article 352 of the same 'Treaty on the Functioning of the EU'. This means that the Union can act if this is necessary to achieve an objective in the Treaties and if no other provision in the Treaty provides for measures to achieve it. This is called 'the flexible legal basis'. In our view, this is a manipulative and arbitrary key that fits every lock. Apparently, the European Union cannot to this day abandon the technique of invoking the goal of 'ever-increasing integration' in order to seize power when it suits it.

Why does this not even remotely resemble federalisation? Let us discuss it again. Practice has shown for years that the principle of subsidiarity leaks badly. The Protocol preventing the Union from arbitrarily taking decisions outside the realm of its expressly granted competences, including the watchdog role of national parliaments in ensuring compliance with that Protocol, was already working very badly before the advent of the Lisbon Treaty. It has not worked at all since the entry into force of that Treaty in 2009, because from then on, the European Council took over principled decision-making. And nobody can stop that machine. Why is that? Because of the hierarchy we mentioned above: something once decided by the European Council means the obligation for the Member States to implement it uniformly in their own country: the source of assimilating integration. Not only is this alien to a federal system, but it is also unclear who is exclusively competent in what matters. It does say a few times that this or that authority has exclusive competence, but Articles 1 to 15 of the 'Treaty on the Functioning of the European Union' contain so many vague additions that there is no clarity, as there is in the American Constitution.

The US Constitution does not provide that the Federal Authority can overrule the Member States. It confers on the Federal Authority an exhaustively enumerated set of powers and that is all. There is no hierarchy towards the Member States, nor any division of powers. Just like in the Swiss Constitution.

This is the essence of federalism: a true federation has shared sovereignty but not shared powers: each, the Federal Authority, and the Member States, has its own powers. This is the result of the first two weeks of debates in the Philadelphia Convention that began in late May 1787. The 'Virginia Plan', which James Madison had put on the table as the federalist opening piece, contained a Clause giving the

federal authority the power to overrule 'improper laws' of states. There was an objection to this, made explicit in the 'New Jersey Plan' produced immediately afterwards. The parties subsequently resolved this dispute in the 'Great Compromise' by opting for a vertical separation of powers, expressed in a series of limitable powers of the federal authority: no hierarchy. Thus, no intervention from above if a member state performs its legislative or executive functions 'improperly'.



That's how it should be: in a federal system, the Member States are and remain sovereign in their own circles. Our Constitution therefore does not mention the principle of subsidiarity at all, for the simple reason that the exhaustive enumeration (more on this later) of federal competences establishes subsidiarity in an absolute sense. The Federal Authority has no discretionary powers - let alone arbitrary powers - to determine for itself what Member States would not be able to regulate or achieve by themselves.

Explanation of Clause 3

The United States of Europe accede to two charters. One is the European Convention or the Protection of Human Rights and Fundamental Freedoms, drafted by the European Court of Human Rights. The other is the Charter of Fundamental Rights of the European Union.

Because both Charters together have a perfectly ordered system of fundamental rights for Citizens within the EU and other European Citizens, not living in the EU (yet), we embrace both Charters as an extended Bill of European Rights. In the fourth paragraph of Clause 3, we add an additional safeguard: the right of Citizens and Press to free access to documents of the federal government, though subject to further provisions in a law.

The reason for embracing the articles of the Charters but not the reference to the principle of subsidiarity is thus – as explained earlier - that the structural dysfunctionality of that principle has allowed the EU to continue its assimilationist production for years, continuing the tradition since the founding of the European Communities. Let us also put it another way: the principle of subsidiarity as enshrined in the European treaties from the outset has never worked in the sense in which it was intended, namely, to leave to the Member States what they themselves do best. When it suits the European Council, it is always bypassed. Only by giving the European federal authority a limitative set of powers (as the

Germans say, a 'Kompetenz Katalog') can the disregard for the principle of subsidiarity be stopped.

We are wrestling with a legislative issue here. It has to do with Article 20(2) of the 'Treaty on European Union' (one of the parts of the Lisbon Treaty): this article states that nine Member States are entitled to enter into enhanced cooperation. However, this is only permitted when it promotes the objectives of the EU, protects its interests, and strengthens its integration process. It must not undermine the internal market: a single market for goods, services, persons, and capital.

The relevant provisions of the Lisbon Treaty (including Articles 326 to 334 of the other Lisbon Treaty, the 'Treaty on the Functioning of the European Union') indicate that if the nine EU Member States create a closer partnership (for example, in the form of a Federation) then they may use the Union's institutions. Including everything that exists in terms of regulation around those institutions. Strictly speaking, this would imply, at least that is our interpretation of Article 20 of the 'Treaty on European Union', that after ratification of the Federal Constitution by the peoples of at least nine EU-Member States, that federation would have legal access to all existing EU institutions and their powers. So, also to the European Central Bank, the European Court of Justice and so on.

If this is correct reasoning - a matter for assessment by the Citizens' Convention - then Clause 3 would be superfluous. After all, the Charter of Fundamental Rights would then already apply by law to the Federation of Europe. And then an explicit reference to it in Article 1(3) would not be necessary.

6.5 Explanatory Memorandum of Article II: Organization of the Legislative Branch

Explanation of Section 1

We have deliberately chosen to include the words 'Organization of ...' in the title of Article II because Sections 1-6 of Article I of the US Constitution deal with organizational/institutional aspects, while its Sections 7-10 deal with competences. We think it is better to split those two topics. Our Article II deals only with the organizational/institutional aspects of the legislature. A new Article III deals with competences.

Clause 1 implies that the European Congress has the same position as the US Congress: the assembly of both Houses at the same time. Only that Congress has legislative power. But there are some nuances to this principle. The President has a kind of derived legislative power in the form of 'Presidential Executive Orders'. These are regulations of a lower order than the formal legislative power of

Clause1, and furthermore these Executive Orders must be traceable to that legislation of Congress. See Chapter 10. Another nuance is that the US Supreme Court has ruled several times that Congress can delegate legislative power to federal agencies.

In Clause 2, we opt for Brussels as the seat of both the European Congress. This implies that Strasbourg will no longer participate in meetings of the Federation of Europe. The intergovernmental European Parliament has for years been shuttling back and forth between Brussels and Strasbourg because France once forced it to do so. Despite repeated protests from the European Parliament, France does not want to change this. It marks one of the many shortcomings of the intergovernmental system: through its inevitably ongoing game of winner-and-loser in the exchange of national interests, one national interest determines the order of the European whole.

In the explanatory notes to Article I, it was mentioned that under Article 20, it is possible for nine (or more) Member States to enter into enhanced cooperation. For instance, by forming a federation together which can then be one of the member states of the intergovernmental EU. If that is the case, a new organisational issue arises. The seat of the EU is in Brussels. So is the Federation's.

This complexity is an inevitable consequence of the need for a systemic change, a paradigm shift. The complexity will remain even if we assume that the intergovernmental system will be somewhat lightened when nine Member States first leave the European Union and then participate in it as a single federation. However, the complexity will only be minimal if the EU countries all decide at once to join the European Federation. Then all the existing institutions of the European Union could be incorporated into the Federation. Whether or not in a modified sense.

Explanation of Section 2

In this section we don't follow the American Constitution. First, the choice to have one constituency for the whole Federation; no elections for the House of the Citizens per State, as is the case in America and also in the EU. We reject only being able to vote for fellow countrymen per State. We opt for being able to vote for the whole Federation: one constituency of the countries belonging to the territory of the federation. So, a Slovakian should be able to vote for a Belgian, an Irishman, a Cypriot, a Spaniard, a Dutchman and vice versa. This single federal constituency will give rise to transnational political parties. See Chapter 11. Only through a single constituency for the United States of Europe can a direct relationship be established between Citizens and their Representatives. For the

text of this Section, this choice implies that an extensive description of the electoral system in America is omitted here.

The Americans' main objection to a single American constituency (instead of elections via the system of electoral votes per state) is based on the fear that the population of the most densely populated cities and areas would gain more influence than the inhabitants of rural areas. As a result, the distribution of power in the House of Representatives could be unbalanced. However, the electoral system we propose is based on the so-called list system: each transnational political party deposits a list that ranks eligible persons, voters vote for the list of their choice and thus simultaneously for a person. The electoral divide determines how many votes a candidate needs to win a seat. Example of an electoral divide: if ten million valid votes are cast for one hundred seats, the electoral divide is 10,000,000:100 = 100,000 votes. This number of votes is needed for one seat; this is the electoral divide.

The political parties themselves decide who will be on the electoral list. Whether there is an (un)balanced representation of the States in the House of the Citizens of the European Federation depends on how the political parties compile their electoral lists. The political parties can prevent small Member States of the European Federation from having no or very few representatives in the House of the Citizens. The trans-European political parties should put good candidates from such States on electable positions.

Political parties are free to choose the candidates they want to stand for election. But we are introducing a revolutionary rule in Article II, Section 2, Clause 2 to extend the system of checks and balances. Checks and balances are the most powerful defence mechanism against undemocratic rule. But on the issue of eligibility, there is no check on whether a candidate has the right competence and suitability to perform the most important political office in the federation: representing the citizens. Citizens want to be represented by competent and suitable persons. We cannot leave the selection of candidates entirely to the political parties because they will always maximize their power in the fight for the political values they cherish. If anywhere in the constitutional and institutional system a place must be reserved for citizens to have influence, it is at the front of the door where representatives want to enter the House of Citizens. For a detailed explanation of this rule, see Chapter 11.

This list system is also ideally suited to promoting gender equality. If each political party draws up its list of candidates in the alternating gender-to-female ratio, etc., the composition of the House of the Citizens will, by definition, approach the 50% female-to-male ratio.

We do not provide for by-elections for Members of the House who leave office early. We propose that the list system should include a system of deputies.

Then there is the question: 'How can a German know whether to vote for a Luxembourger or a Cypriot?' That is a non-issue. He does not need to know, because the European Congress is not about German or other national interests, but about European ones. He just needs to have confidence in the transnational political party of his choice. And thus, the confidence that that party will put the best candidates, well distributed over the entire Federation, on electable positions on the list. Again, see Chapter 11.

So much for our first consideration of deviations from the US Constitution.

Secondly, we are not following the term of office of the House of the Citizens. In America, members of the House of Representatives only sit for two years. We are taking six years for the European House of the Citizens, full stop. The reason is simple: the democratic deficit of the European Union, which has been criticized for years, can only be compensated by giving the Citizens' Representatives a central role. The European States, with their nationalistically driven interests of intergovernmentalism, have deprived the representation of the Citizens of its powers for too long.

Moreover, we do not consider it right to send the members of the House of the Citizens on an election tour every two years. When they have just settled in, they would have to go out again to secure their next election. In the United States of Europe, they can devote the better part of six years to looking after the interests of the citizens, rather than the interests of their re-election. We do want to limit the number of terms to three. So, a maximum of 18 years in the House of the Citizens. In this way we can prevent the quality of the work of representation from deteriorating as a result of the concentration of power, laziness, or excessive influence from lobbyists.

A question that we cannot answer precisely at this stage is: how many members should the House of the Citizens consist of? In the United States, this has been set at 435 for 328,200,000 inhabitants (census 2019). Two things need to be determined:

1) How many members should the House of the Citizens have for the roughly 500 million of the European Union of twenty-seven States?
2) How large should this House of the European Congress be if, at the start of the United States of Europe, only nine European countries join it?

We do not have a concrete answer to that yet. However, it is estimated - based on a population of around 600 million after the accession of all EU Member States plus some states that are currently in the waiting room - that the House of the Citizens could consist of around 600 people.

Neither can we now foresee in which year the first elections to the House of the Citizens might be organised. However, in view of Chapter 2, we consider it likely that the federation of the United States of Europe will come into force in 2035.

We do prefer May for that year and for each subsequent election because we are now used to the fact that the elections to the European Parliament take place in May. That is why Article II states that elected Members of this House shall take office no later than 1 June of that election year.

Unlike the US Constitution, in Clause 2 of this Section we set the age of eligibility for the House of the Citizens, at thirty rather than twenty-five years. Why? To have more guarantee that those elected have sufficient knowledge, wisdom and (life) experience for the most important political office in Europe. The emphasis should be on generalists, not specialists. We consider the admission of 20-year-olds to the House of the Citizens to be just as pointless as putting a 60-year-old in the football teams of CF Barcelona or Manchester United. Section 2 goes on to discuss the requirements of competence and suitability for political office in the House of the Citizens. The rest can be found in Chapter 11.

In the third Clause of this Section, we explicitly state, as in the American and Swiss Constitutions, that the members of the House of the Citizens exercise a mandate to be accountable only to those European Citizens. Their mandate is also exclusive - that is to say, they may not exercise any other public function, office, or mandate, at any level of government; in this way we prevent conflicts of interests and the concentration of power.

One more important aspect by the way. In addition to the 435 voting members of the US House of Representatives, there are six non-voting members 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 from Puerto Rico. Always seeking as much congruence as possible with the American constitutional system, we take the following position for the United States of Europe.

Brussels is the constitutional capital of United States of Europe, but not, like Washington in the District of Columbia, a territory with its own constitutional status

that justifies membership in the House of the Citizens. Therefore, no separate seat for Brussels in the European House.

Another question is what status the so-called Overseas Countries and Territories should have. These are countries located elsewhere in the world, but which constitutionally belong to a Member State of the Federation: France, the Netherlands and Denmark. Their associate membership of the European Union is very similar to that of the six territories mentioned above that are members of the US House of Representatives without voting rights. We therefore recommend that these Overseas Territories also be given such a status in the House of the Citizens: membership without voting rights. Of course, this leaves us with the question: how many delegates per territory and who chooses or appoints them? This could be dealt with in a simple way: the Member State concerned organises an election for one non-voting member of the European House of the Citizens in the territory concerned. The principle of incompatibility of offices should also apply here. One cannot be a member of the European House of the Citizens and also hold a public office in one's own constituency.

In a nutshell, our electoral system boils down to the following points:

- The federation of the United States of Europe has universal suffrage, popular voting, with seats distributed on the basis of proportional representation.
- Everyone who is registered in a member state of the United States of Europe and is 18 years of age has the right to vote in periodic elections to the House of Citizens.
- Voters registered in more than one Member State, for example migrant workers or students (originating from Member State A but working or studying in Member State B), receive only one ballot.
- The constituency is the entire territory of the United States of Europe. No elections per Member State, nor per district. So only the popular vote applies throughout the constituency.
- Transnational political parties place candidates on electoral lists and ensure equal gender distribution on those lists; they also ensure candidates from all Member States so that a voter from one Member State can vote for a candidate from whatever other Member State.
- After the election, the total vote count determines which candidate has won a seat in the House of Citizens. A seat is determined by dividing the total number of votes cast by the number of seats in the House of Citizens. So, the number of times a political party reaches that number determines the number of seats for that party. The seats that remain are called residual seats. They are distributed proportionally among the political parties.

Explanation of Section 3

For the composition of the Senate, we choose the original version of the American Constitution that was drafted in 1787 and came into force in 1789. According to that text, Senators were elected by the legislature of the States. Not elected by the Citizens. This was changed in 1913 by Amendment XVII. From then on, the US Senate is composed by the voters of the States. We wonder whether that is a good Amendment. It was and still is the intention that the House of Representatives represents the interests of the people and that the Senate represents the interests of the States. This is an essential feature of the federal system: the Federation is formed by the Citizens and the States. Therefore, their representation is arranged separately from each other, from two separate sources: one from the Citizens and the other from the States. It is also part of the checks and balances.

By shifting the election of Senators from the Legislatures of the States to the Citizens of the States, the emphasis is placed on the interests of the Citizens in the Senate as well. In essence, this means a 'strengthening' of the power of federal authority in Washington. Since the beginning of the twentieth century, this has only increased. At least in the perception of the Republicans. A fierce debate between Republicans and Democrats has been raging for some time. Citizens of a number of States are even calling for a withdrawal from the Federation - again, as in 1860. In February-March 2013, there was even an action in the Oklahoma State Parliament to pass a law to nullify the federal Obamacare law. This is constitutionally out of the question; a state has no such power, but this unconstitutional attempt to nullify a federal law is indicative of the strained relations between the Federal Authority and that of some States. These relations flared up again in the period of Donald Trump's presidency. The storming of the Capitol on 6 January 2021 was also part of a call for a number of states to decide to leave the federation again (as they did in 1860).

The EU has a similar problem with Brexit. In order to prevent a federal European Congress from placing all the power in the hands of the Citizens and undervaluing the interests of the States, we therefore choose the system whereby the Senators are appointed by the Legislatures of the Member States. And eight Senators per State. Why not, as is the case in America, only have two Senators per State? And why exactly eight? We do so to ensure that each State of the European Federation is adequately represented in the Federal Senate, however small and sparsely populated a State may be. By assigning each State of the Federation eight representatives in the Senate, each State is assured of sufficient representation to participate effectively in federal decision-making. Moreover, this figure may be an incentive for Europe's smallest States, with populations of at most a few million, to join the Federation. Under the Lisbon Treaty, they are now guaranteed five to eight seats in the European Parliament. By joining a European Federation, they are

guaranteed eight seats in Congress - that is, in the Senate - even if none of these smallest States were to win a seat in the elections for the House of the Citizens. The fact that small Member States in a federal Congress also have delegates in the House of the Citizens is a matter and task for transnational political parties, which must organise their electoral lists in such a way that Luxembourg and Cyprus are also represented. See Chapter 11.

The previous Clause explains why we opt for eight instead of two Senators per State. Another question is: why not twelve, fourteen or even more? The reason is that with that the danger of specialization looms. And specialists we will certainly find in the House of the Citizens. That is sufficient. In our view, the Senate consists of generalists, wise people with broad experience in the way a State translates social developments into sensible policies.

For the Senate, too, we are working on the basis of a six-year term of office, whereby half of the Senate leaves every three years, but may be reappointed once more. The choice to change Senators after three years is based on our wish to achieve a good basis in the parliaments of the Member States. We do not provide for elections for the early replacement of Senators, so a system of deputies must be included in the Rules of Procedure of the Senate and in the Rules of the States.

As in the case of the House of the Citizens, we cannot now anticipate the year in which the first appointments to the European Senate will be made. The date will depend on when the Constitution enters into force. We are therefore thinking of 2035. We can imagine that the appointment of Senators by the State Parliaments presupposes that all national legislatures are in session. However, there is a real possibility that the planned appointment of Senators coincides with parliamentary elections in one State or in a few States. Therefore, we provide for a period of five months during which the appointments of Senators can take place. In this way, the States can appoint their Senators every three years in time, before a Parliament is dissolved (prematurely or not). And so, the continuity of European governance is assured. The only drawback, it seems to us, is that in the event of the premature dissolution of their national Parliament, Senators will have to wait a few extra weeks to take up their office, but in any case, on 1 June of the year of appointment.

Clause 2 of Section 3 contains the same defence mechanism as in Section 2, Clause 2: it is a check on the ability and suitability of candidates for the political office of representing the States. The Senate makes rules to check the ability and suitability of candidates for the political office of Senator. For further explanation of this rule, we refer to Chapter 11.

Clause 2 provides that Citizens from other parts of the world must have lived officially in a Member State of the federation for at least seven years - and thus have sufficient Citizenship - to be eligible for election.

Clause 3 states that the mandate of Senator is individual; a Senator receives no instructions, not even from the institutions of the State from which he or she comes, or which elected him or her. The mandate is exclusive: it excludes any other public office.

Clause 6 mentions a Court of Justice. So, in addition to the existing Court of Justice of the EU. If all EU countries were to join the Federation, the existing Court of Justice could, of course, take on that role of the Court of Justice of the Federation. As long as there are only a limited number of countries in the Federation, a separate Court of Justice should be established. At least that is our idea. However, this is a subject that we would like to put to the Citizens' Convention for consideration.

Following the US Constitution, Clauses 6 and 7 of Section 3 provide for the possibility of dealing with persons who misbehave while holding an official or political office, in addition to criminal responsibility.

As with the Overseas Territories, there is the question of the position of the 79 ACP countries, now independent states but previously colonies of European countries. In Africa, in the Caribbean and in the Pacific. The European Union maintains a special relationship with these countries through treaties, mainly aimed at creating trade relations that (can) benefit both parties. However, this relationship is always under pressure. While the EU - within the framework of the policy of the World Trade Organisation - wants to abolish as many trade barriers as possible, the ACP countries usually advocate the continuation of protection. The periodic renewal of the treaty relationship between the EU and the ACP countries does not seem able to eliminate these tensions. On the contrary. However, we cannot afford this in the rapidly globalizing world. Therefore, we propose a paradigm shift in this area as well: promote the functioning of EU-ACP treaties by giving the ACP countries a place in Congress. What would be against giving six seats (without voting rights) in the Senate, the house explicitly intended for the interests of states, to two Senators from the African ACP group, two from the Caribbean group and two from the Pacific group? In order to promote gender equality, these two members per A, C and P should always consist of a woman and a man. Although they would not have the right to vote, they could participate in deliberations in the Senate committee(s) that prepare a Senate position on trade treaties that the President wants to conclude. This would give a more positive dimension to the increasingly strained relationship between the European Union and those ACP countries: those

countries would no longer be negotiators on the other side of the table, but partners on the same side. It seems to us that it is up to the three groups of countries themselves to elect or appoint their representatives to the European Senate. Here too, the principle of incompatibility of offices should apply: one should not hold, alongside the membership of the European Senate, any other public office anywhere.

It does not seem necessary to us to include this in the Constitution itself. This specific relationship between the United States of Europe and the ACP countries can be settled by treaty. Should anyone argue that the absence of a literal passage in the Constitution is in conflict with the Constitution, the Court of Justice can teleologically establish, on the basis of the explicit intention of the Constitution as described here in the explanatory statement, that this is in fact in accordance with the Constitution.

If all the countries of the current EU join the Federation, our Senate would therefore consist of 27 x 8 = 216 people. Plus, the above mentioned (non-voting) 3 x 2 = 6 members from the former colonies of European countries, the ACP group. This confirms the reader's suspicion that there is no room in the two Houses of the European Congress for Heads of State or national Governments.

Explanation of Section 4

In deviation from the American Constitution, we propose that not each House separately regulate its elections, but the European Congress. The reason is the choice to have the election of members of the House of the Citizens take place throughout the Federation. In other words, no representatives of the people should be elected per State, but of all the affiliated peoples together. In this way, this House is the indisputable emanation of the elective Citizens of the Federation.

Clause 2 is part of American Amendment XX, ratified in January 1933. Clause 3 is self-evident. After the Constitution, the Rules of Procedure of a House of Representatives is the most important document because it governs the procedure of democratic decision-making.

Explanation of Section 5

There are therefore three Rules of Procedure: one for the European Congress (the two Houses together) and one for each of the two Houses. The recording of deliberations and votes implies the openness of these matters, unless the House concerned decides that certain subjects should remain closed.

Explanation of Section 6
Clause 1 may speak for itself. Clause 2 is about immunity which must guarantee the free exercise of the mandate. Each member of Congress must be able to function without external pressure.

6.6 Explanatory Memorandum of Article III: Powers of the Legislative Branch

The powers of the Congress concern matter of national importance. For example, currency, federal taxation, commercial relations with other countries, foreign affairs and defence. And a number of other - exhaustively enumerated - matters.

So, each bill comes from one of the Houses and is first submitted to the President. He can either sign it or give a reasoned veto. In the latter case, it goes back to the House concerned for reconsideration. If that House and the other House then adopt the proposal by a two-thirds majority, the law passes.

Explanation of Section 1
Here we choose a different structure from that of the American Constitution. The American Article I of that Constitution has ten Sections. These deal with both the organisation of Congress and its powers. We think it is better to split these two subjects. Therefore, we have given our Article II the title of 'Organisation of the Legislature' which then covers Sections 1-6. We then deal with Sections 7-10 in a new Article III under the title of 'Powers of the Legislature'. The Sections 7-10 of the American Article I are then numbered Sections 1-4 in our Article III.

So, both Houses make initiative laws. Not the President and the Ministers of his Cabinet. They do not even act in the Houses. This strict separation of legislative and executive power guarantees the autonomy of the European Congress in its core task: the drafting and final approval of federal laws.

Section 1 gives the exclusive power to the House of the Citizens to make tax laws. Unlike legislation in the general sense, the Senate therefore does not have that power. However, the Senate may try to change those tax laws through amendments. The reason for declaring only the House of the Citizens competent to take an initiative in this regard is based on the consideration that 'groping in the purse of the citizens' is solely and exclusively at the discretion of the representatives of those citizens.

The House of the Citizens thus decides what type of federal taxation will take place: income tax, corporation tax, property tax, road tax, wealth tax, profits tax and/or value added tax. Or perhaps it will leave those types of tax to the jurisdiction of the States and creates only one new type of tax under the name Federal Tax, provided that States' taxes are simultaneously reduced or abolished

to prevent this Federal Tax from being imposed at the expense of the Citizens. We say no more about this because it is a subject for the politically elected. That is why we do not comment here on the dispute regarding the harmonization of taxes, for example corporate taxation.

In Clause 2, the application of the *Lex Silencio Positivo*, a rule of Roman law, is remarkable: if the President does not express his opinion within ten days, the proposal automatically becomes law. If the President rejects the bill, he must give reasons for his rejection and return it to the House that drafted it. This is called the President's veto. The word 'veto', by the way, is not explicitly mentioned in the US Constitution. Nor is it in our article.

At this point, it seems useful to briefly discuss one of the consequences of the American choice to support the principle of the trias politica with an ingenious system of checks and balances. In practice, this sometimes leads to a situation in the US where one of the Houses, together with the President, forms a blockade to solve a budget crisis (fiscal cliff). On a superficial view, one could attribute this to a constitutional system error: if both powers stand on their constitutional lines, an impasse arises. And that could be seen as an error of the American Constitution. But this view is wrong if one goes back to the main reason for establishing this system of checks and balances: never again should anyone be the absolute boss over everyone else. This forces all parties involved, in case of a possible deadlock, to show the responsibility that the Citizens have given to them. And that is no more or less than ensuring that the deadlock is resolved. The continuation of such a sad situation is thus not due to a systemic error of the US Constitution, but to the inability of the politicians involved to take responsibility for the common good.

So, in the US Presidential System, none of the three branches - the legislature, the executive and the judiciary - is the boss of the other. There is only one boss: the people. The people can demonstrate that power in two ways: in elections and in a referendum that offers a decisive solution when the three branches of government have reached an impasse. The referendum matter is discussed in 6.8.

Explanation of Section 2

The limitative enumeration of the powers of the federal authority is a typical feature of the federal system: the States may regulate anything that is not explicitly assigned to the federal authority. It is precisely laid down that the federal government may not interfere in matters that are part of the States' complex of powers. See here the protection of the sovereignty of the States. And vice versa, it is also laid down in what respect those States may not interfere with federal authority except with the authorisation of Congress.

Here is exactly one of the main differences between intergovernmentalism and a federation: no hierarchy at the top, shared sovereign legislative power of the Federation and its constituent parts, the States. So, no interference in the federal level of government and in that of the States. This contradicts the popular misconception that a federal State is a superstate that breaks down and absorbs the sovereignty of the constituent states. Quod non. In a federal system, the powers of the States and the Federal body remain separate.

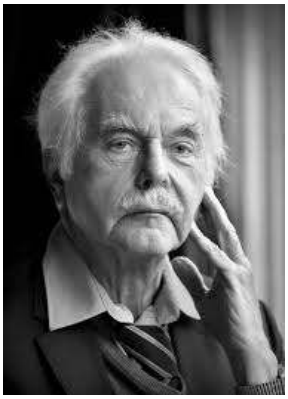
The limitative enumeration of the powers of the legislature is intended to regulate common interests that Citizens or States cannot provide for. The essence of the vertical distribution of power is that Citizens and States ask a federal body to take good care of a limited set of common interests (for which they are also willing to pay), without this federal body having the right to assume that it is then everyone's boss. All other powers remain with the Citizens and the States, untouchable by the federal authority. The States retain their own Parliament, Government and Judicial Power for what is not assigned to the United States of Europe.

This Section 2 is our version of the so-called 'Kompetenz Katalog' which Germany proposed during the Maastricht Treaty in 1992, and many times afterwards, but which was always rejected by other EU countries. This is one of the serious shortcomings of the intergovernmental system.

Our list is completely different from the exhaustive lists (plural) that we find in the Treaty on the Functioning of the European Union with regard to the European Union. Not only are they not precisely and genuinely exhaustive, but they are also thwarted by the uncontrollable principle of subsidiarity, the hierarchical exercise of powers and the sharing of competences: all of these are a curse in a truly federal temple because they encroach on the sovereignty of the States. For the record, this principle of the limitative enumeration of federal powers is one of the greatest achievements of the debates in the Philadelphia Convention and was achieved within two weeks.

This seems a good place to quote Frank Ankersmit, emeritus professor of the History of Philosophy. In the Dutch Yearbook of Parliamentary History 2012, entitled 'The United States of Europe', he writes among other things:

> "There is no point in going into decision-making in Europe in this place, and so it is sufficient to note that it is at odds with everything that has been thought up in the history of political philosophy about public decision-making. This decision-making in Europe is completely unique in history - and that is certainly not meant in a



positive sense. Given the immense problems of European unification, one can understand that; but it is and remains an ugly thing. More specifically, this decision-making process is in fact the official codification of all the uncertainties concerning the ultimate goal of European unification. It is as if the European administrators deliberately translated this uncertainty into a governance structure that is the organisational expression of it. It is as if they wished to indissolubly enshrine Europe's inability to jump over its own shadow sooner or later in an administrative structure that would actually make this impossible."

Compare this with the already mentioned systemic errors (see Chapter 3) of the Lisbon Treaty. It is such a flawed document (legislative, democratic, organisational, decision-making) that renewal is only possible by stepping out of it: 'step out of that box' and avoid the pitfall of trying to improve the system by adapting that flawed Treaty. After all, it is filled with systemic errors. Every new amendment will be poisoned by these errors because they are, as it were, 'genetically' burned in.

Those in positions of leadership in the intergovernmental system do not realise how destructive wrong legislation is to a society. Fundamental knowledge and understanding of the need for well thought-out constitutional design as a basis for a well-functioning society is apparently absent. Insufficient knowledge and courage to make a substantial contribution to the creation of the United States of Europe.

To accept the Treaty of Lisbon as the basis for the pursuit of a united Europe is, in our view, a form of undesirable relativization of law. As a trivialization of the need to ensure in all circumstances that the constitutional basis of society has a professionally formulated codification. Even though parts of the law, especially administrative law, have acquired an instrumental function (law as an instrument to achieve political policy goals), there are and will remain doctrines of inalienable, fundamental law which neither politics nor policy may tamper with. The 'rule of law' means that no one is above the law. But that only has meaning if the making of that law is done according to irrefutable standards, not polluted by political folklore.

Now on to our draft Federal Constitution. Essential additions compared to the US Constitution are:

- Clause d, immigration policy as a federal matter and no longer belonging to a European member state, but with the cooperation of the States in the enforcement of the federal rules, e.g., through their services of assistance, education, and police.

- Clause j, the basis for a federal approach to a European digital (electronic) agenda plus the fight against cybercrime.

- Clause n provides for the creation of federal armed forces, i.e., one European army of land forces, naval forces, and air forces. A well-known national(istic) driven point of contention, but as provincial folklore under a federal Constitution not worth contesting.

So, this Section 2 is about the most important aspect of a Federation: the vertical separation of powers between the Federation on the one hand and the Citizens and States on the other. What the European Congress may regulate is listed there exhaustively. However, this does not mean that it is immediately clear how many Ministers the executive should or could consist of. So, for which policy areas should there be a Minister with his or her own Ministry from the outset of the United States of Europe? We will deal with this under the organisation of the Executive.

As for this exhaustive list, three distinctions should be made.

Firstly, we note that the United States of Europe is logically also competent to exercise the powers assigned to it not only within the Federation but also outside, for example by concluding treaties. We link the powers of the Federation both to its internal policy and its foreign policy. The same applies to the States that are members of the Federation. How this works is covered in the organisation of the Executive.

Secondly, we must point out the last power of Section 2, Clause o. In the text of the US 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 the laws it thinks it needs. But if they do not unmistakably arise from the limitative set of powers under their Article I, Section 8 (our Article III, Section 2) the President can veto them. Or the Supreme Court can declare them unconstitutional, the so-called 'Judicial Review'. See Chapter 10.

Thirdly, another important aspect. The US Congress actually has even more powers than those mentioned in its Constitution under Article I, Section 8 (our Article III, Section 2). We are now entering the realm of the so-called 'Implied Powers' (see further Chapter 10): powers that are not literally stated in the

Constitution, but that are derived from the complex of powers of the American Section 8.

One of the most important is called 'Congressional Oversight'. This oversight - organised mainly through parliamentary committees (both standing and special), but also with other instruments - concerns the overall functioning of the Executive branch and Federal Agencies. The aim is to increase effectiveness and efficiency, to keep the executive in line with its immediate task (execution of laws), to detect waste, bureaucracy, fraud and corruption, protection of civil rights and freedoms, and so on. It is a comprehensive monitoring of the entire policy implementation. This, by the way, is not something of the recent past, it arose from the inception of the Constitution and is an undisputed part of the ingenious system of checks and balances.

Mind you, the Constitution does not know this 'Congressional Oversight' in so many words, but it is supposed to be an inalienable extension of the legislative power: if you are authorised to make laws, you must also be authorised to control what happens in their implementation. It is self-evident in an administrative cycle.

Of course, there have been attempts to demonstrate with a strict interpretation of the US Constitution that this form of 'Implied Powers' is not in accordance with the Constitution. However, the US Supreme Court has always rejected this claim. This is in line with the vision of President Woodrow Wilson, who saw this parliamentary oversight as being just as important as making laws: "Quite as important as legislation is vigilant oversight of administration." All this in the knowledge that the US Constitution, in Article I, Section 9, determines the limits within which the US Congress may exercise the limitative powers of their Section 8.

We would like to draw attention to some specific Clauses of our amended Section 2.

Firstly, Clause a, the power to levy taxes and the like. This is necessary in America to pay the debts and 'for the common Defence and general Welfare of the United States'. We have replaced the words in inverted commas with “necessary for the fulfilment of the guarantee set forth in the Preamble”. In our view, the generation of the federal authority's own income should extend beyond the payment of the Federation's debts and the funding of defence and general welfare expenditures. In addition to the explicit reference to being able to pay one's debts, we believe it is important that a clear link is made here with the guarantee in the Preamble. In other words, that such taxation is also there to pay for the expenses "of liberty, order, safety, happiness, justice, defence against enemies of the Federation, protection of the environment, as well as acceptance and tolerance of the diversity

of cultures, beliefs, ways of life and languages of all those who live and shall live in the territory under the jurisdiction of the Federation".

Clause c is called the 'Commerce Clause' in the US Constitution. For the United States of Europe, the application of this provision - partly in the light of the conclusion of trade treaties - will be essential for the financial-economic position of Europe. In this respect, matters such as a Fiscal Union and the internationalization of the euro (see Section 3) play an important supporting role.

Explanation of Section 3

Section 3 is devoted to principled limits on the federal powers granted to Congress in Section 2 to protect individuals. This concise Section 3 on individual rights is sufficient in this draft Constitution. No more is needed. Indeed, Section I, Clause 3 of the draft states that the United States of Europe subscribes to the EU Charter of Fundamental Rights (except for the inoperative principle of subsidiarity[111]) and accedes to the Convention on Human Rights and Fundamental Freedoms, concluded within the framework of the Council of Europe.

The first Clause of Section 3 gives the States the right to pursue their own policy on foreigners for a few more years. From the as yet unnamed year 20XX onwards, this will be federal immigration policy. And with that, the Federation of Europe will present itself as a Federation that welcomes foreigners under certain conditions, instead of using bureaucratic and hostile policing mechanisms and legal constructions aimed at defence to keep citizens from other continents out of the Federation, or to expel them. The United States of Europe can still use tens of millions of active, enterprising peoples to enrich its cultural diversity, strengthen its economy and cope with its shrinking population. This requires a policy[112] that organises immigration for the benefit of the Federation and the immigrant. European policymakers can take inspiration from the policies of Federations such as Australia, Canada, and the United States.

Explanation of Section 4

According to Clauses 1 and 2 of this Section, neither the States of the Federation, nor the Federation itself, may introduce or maintain regulations which restrict or interfere with the economic unity of the Federation. Again, powers not expressly

[111] The principle of subsidiarity is also not mentioned in the Preamble because subsidiarity coincides with federal statehood. This has already been explained.

[112] That policy will say goodbye to Frontex, the European Border and Coastguard Agency. The way in which the European Union has allowed that agency to evolve, in terms of its powers, personnel, procedures and weapons, into a defence mechanism with no democratic control and no scrutiny by human rights organisations, thus becoming the playground of industrial lobbyists, may well evolve in the greatest anti-humanitarian crime of the 21st century.

assigned to Congress by the Constitution in Article III, Section 2 rest with the Citizens and the States. This is the other side of the coin called 'vertical separation of powers'. Nevertheless, in America it was considered useful and necessary at the time not only to place limits on Congress in their Article I, Section 9, but also to remind the States that their powers are not unlimited. To this end, their Article I, Section 10 (our Article III, Section 4) stipulates what the States may not do.

Clause 3 imposes the same limitation on the legislative power of the States as that of the Federation, contained in Section 3(3), in order to maintain legal certainty, not to affect the exercise of judicial power and to safeguard rights of Citizens in force or enforced. It is also important, a subject that has often been addressed by the US Supreme Court, that States may not legislate to override contractual obligations. Legal certainty for contractors and litigants is of a higher order than the power to declare a contract or a court decision ineffective by law.

In Clause 4, the provision that none of the member States of the Federation may create its own currency (taken from James Madison's Federalist Paper No 44) is a clear warning to some EU Member States considering returning to their own former national currencies. Nevertheless, states are allowed to issue bonds and other debt instruments to finance their deficit spending. In other words, we are proposing to create a financial system similar to that of the USA.

Clause 5 states that export and import duties are not within the competence of the States unless they are authorised to do so. They may, however, charge for the expenses they incur in connection with the control of imports and exports. The net proceeds of permitted levies must fall into the coffers of the Federation. This matter is likely to have a high place on the agenda of the previously recommended six Senators (without voting rights) delegated by the ACP countries to the European Senate.

Clause 6 emphasizes once again that defence is a federal task. On the understanding that the European Congress may decide that a member state shall accommodate on its territory a part of that federal army and keep it ready to act in case of emergency.

Explanation of Section 5

In this Section 5 we have included a number of additional rules to combat political corruption[113]. Because gigantic sums of money are spent on election campaigns in America, there is a saying: "Money is the oxygen of American politics". In our federal constitution for the United States of Europe, Article III, Section 5 contains

[113] Clauses 3-9 of Article III were added by Leo Klinkers, taken from Charles Hugh Smith, '10 Common- Sense Amendments to the US Constitution', 21 February 2019.

Clauses justifying the adage: 'Money should not be the oxygen of European politics'.

This is our description of Articles I-III of the United States of Europe. We have stuck as closely as possible to the text of the US Constitution. It is therefore conceivable that words or phrases - vital for a federal Europe - may be mistakenly missing or incorrectly worded. Or that we are regulating things here that are not necessary in the envisaged European federal context. That is why this - like the rest of our draft Constitution - is open to addition and improvement by the Citizens' Convention.

The following Articles IV-X are partly taken from the original US Constitution itself, partly supplemented and improved by texts from the amendments subsequently added to it by Congress. Here too we allow ourselves to improve the readability of the structure of the American Constitution by separating the organisation of the executive branch from the duration and vacancy of the (vice-)presidency.

6.7 Explanatory Memorandum of Article IV: Organisation of the Executive Branch

This article deals with the powers of the Executive branch under the direction of the President. Most European countries do not have a Presidential System, but a Parliamentary Democracy. This means that the Parliament is in charge of the Executive branch and can therefore call the Prime Minister and members of the government to account. But in the US, there is no ministerial responsibility, nor the so-called rule of confidence (= a minister must resign if he no longer has the confidence of parliament). In a Presidential System like the US, this does not exist. Congress and the President are elected by the people and answer to the people. This explains the extensive Committee system and Staff in both Houses, about which more in Chapter 10. But it also explains the extensive lobbying on the part of the Executive to convince members of the Houses of the need to make certain laws. The President and his Ministers do not sit around waiting for a bill to arrive from a House, but actively pursue policies behind the scenes of the Houses to provoke legislation.

<u>Explanation of Section 1</u>

Clause 1 states that the Executive power lies with the President. It is important to emphasize here that that power is to execute what the legislative Houses of Congress decide. And so, in order to keep an eye on the President in this regard, Congress - as already discussed - exercises its 'Congressional Oversight': a deep oversight of the executive.

Clause 1 also stipulates that, unlike the American Constitution, we do not use the system of electoral votes per State, where the principle of 'the winner takes all'

applies. Clause 1 is based on direct election by a simple majority of the votes (50%+) of the Citizens of the Federation of Europe, with the territory of the Federation forming a single electoral district. We therefore opt for the system of 'popular vote', whereby the candidate who receives the most votes, seen across the whole Federation, wins. The distribution of the elected representatives among the available seats is a matter of proportional representation.

In America, there are regular calls to adopt this system instead of the electoral system, because on a few occasions (George Bush versus Al Gore, Hilary Clinton versus Donald Trump), it turned out that a candidate had the most voters (Al Gore and Hilary Clinton) but not the most electoral votes. The President and Vice-President can serve a maximum of two four-year terms.

Clause 2 departs from the US Constitution. It stipulates that Congress sets the date for the election of the President. For the US, there is nothing against that. However, in view of the importance of a federal Europe to reposition itself swiftly and skillfully in the game of globalizing powers and forces, it seems sensible to us to synchronize the terms of office of the American and European Presidents from the outset. In this way, the two can get used to each other and, where necessary, cooperate, without there being a break in continuity because a new President is elected halfway through the term of one in the other continent. Before they remember each other's telephone number, valuable time is lost.

As an aside, in the US, the day of the Presidential election is set for the Tuesday after the first Monday in November. Generally speaking, that is between 2 and 8 November. In 2012, it fell on 6 November. In 2020 on 3 November. Considering European electoral traditions and public holidays in the month of November, we choose the third Friday in the month of October.

Furthermore, in derogation from the American Constitution, Clause 2 stipulates that, during the period between the creation of the United States of Europe and the first presidential elections, an acting President is appointed by and from the European Congress. He will then be ineligible at the first presidential election. The argument is that in the first presidential election of the United States of Europe, the candidates concerned should have a level playing field for the European presidency. Allowing the acting President to participate in that election could adversely affect the level playing field for the other candidates. Moreover, it seems wise that in the months, or perhaps years, preceding the first election of the President of the United States of Europe, someone should be appointed who has no personal interest in his or her election. A businesslike and professional approach to the young Federation is then required.

Clause 3 provides that a person can only become President if he or she has a personal link with the European Federation, namely, possesses the nationality of a State of the Federation and has lived somewhere officially in the Federation for a number of years.

Clause 4 provides for a salary of the President for the whole term of office. In addition, he/she may not accept any other income in cash or in kind - either public or private - other than that derived from his/her own assets that he/she had before taking the presidential office. Under Donald Trump's presidency, this has not been adhered to. It is to be hoped that this will not set a precedent for the conduct of any future President of the Federation of Europe.

Clause 5, the compulsory oath or promise of the President, to be taken at the hands of the President of the Court of Justice, is taken from the US Constitution. In the US, this is a quadrennial event that is graced with pomp and circumstance. By the way, the words "So help me God" are not in the US Constitution. It appears to have been added to the oath by the first President, George Washington, on his own authority.

Explanation of Section 2

The first five Clauses of this Section are almost entirely taken from U.S. Amendment 25, ratified in February 1967. See Chapter 8.

The first sentence of Clause 1 is the impeachment provision, used at the time to pressure Richard Nixon into resigning because of his part in the Watergate affair, after which his successor Gerald Ford pardoned him. President Trump has been impeached twice by the House of Representatives but also acquitted twice by the Senate.

This first Clause also solves a problem that people in America have struggled with for a long time. Namely, the question: if the President is succeeded by the Vice President, is he/she then 'Acting President', i.e., the acting President with only presidential powers, or is he/she President, all the way? Well, the latter has been the case since 1967: the Vice President becomes the President. On that basis, Gerald Ford became President when Richard Nixon resigned because of the Watergate scandal.

Clause 2 was prompted by the concern to ensure continuity in the administration of the Federation. A Vice-President may be appointed by the President - with the consent of the European Congress - if for any reason there is no Vice-President, so that in this case there is no need to appeal to the Citizens.

Clauses 3 to 5, which relate to the President's inability to perform his duties, speak for themselves. They are taken from Amendment 25 of the US Constitution. When the Capitol was stormed on 6 January 2021 and the Democrats accused Trump of being the instigator, the Democrats put pressure on Vice-Presidential Mike Pence to use Amendment 25, Clause 4, to make it clear that President Trump could no longer be considered capable of carrying out the presidency. Pence did not accept that challenge. An impeachment procedure then followed, which obtained a majority of votes in the House of Representatives but not in the Senate.

Clauses 6 and 7 are taken from American Amendment 20, ratified in January 1933.

6.8 Explanatory Memorandum of Article V: Powers and tasks of the President

Explanation of Section 1
The President of the European Federation performs two functions in one person: that of Head of State and that of Head of Government. In addition, he/she is Commander-in-Chief and the Supreme Diplomat.

Section 1 places the supreme command of all armed forces, security services and possible militias in the hands of the President, while the right to declare war on another country is a power of Congress. How does this work in America? Since the Korean War in the early 1950s, it has been accepted that the American President has a great deal of freedom in making decisions to send military personnel to war zones. That is, without first seeking explicit permission from Congress.

Furthermore, since the advent of the United Nations, the specific exercise of that duty has evolved in the sense that the United States only participates in wars (called police actions) under UN mandate. Except in the case of the second Iraq war. It is assumed that operating under that UN mandate implies tacit approval by Congress.

We understand this broad view in the US of presidential decision-making power in the military field because critical situations often require rapid decision-making. It will be no different for the Federation of Europe.

A few military details aside, let us look at the state of affairs in 2012. The Americans spent more than twice as much on defence as the Europeans. Moreover, they had roughly a much better balance between investments (25%), personnel (50%) and operations (25%). In Europe, countries like Belgium, Italy and Greece spent more than 70% of their defence budget on personnel. That meant little investment. Furthermore, the Member States suffered from fragmentation. For example, there were more than 20 different combat vehicles in Europe and defence decisions

were mainly taken nationally, without looking at the surpluses and deficits in NATO and the EU. The EU was only able to deploy 70,000 soldiers out of almost two million European soldiers. We do not have data to assess whether this situation in 2021 is still the same as in 2012.

Clause 2 gives the President the right to appoint the offices in the Executive. He/she appoints the Ministers in his Government. As well as the diplomatic staff, government officials and other officials whose appointment is not regulated in any other way. In America, the appointment of these persons - so also that of the Ministers - is made through approval by the Senate. The House of Representatives has no authority in this regard. By allowing the American Senate to have a say in the appointment of Ministers, the legislature becomes co-responsible for the functioning of the executive. We find this strange in the presidential regime of the US. It seems to us a universal rule that the person who has to do a difficult job must be able to decide for himself with which team he/she will take on the challenge.

We support this view with a quote from General Sir Peter de la Billière, former Commander of the British SAS and during the first Gulf War (1990-1991) under General Norman Schwarzkopf, the leader of the coalition forces, the Commander of the joint military operations[114]:

"Another vital factor is the selection of personnel. You must choose people whose chemistry suits you – people with whom you can work, and who feel easy working with you. Further, you must have complete professional confidence in them, and not worry that they may not be up to their jobs; if you start to worry, you must get rid of them, and quickly. With the right people, you can have misunderstandings and disagreements and yet carry on, secure in the knowledge that thing will come right in the long run."

We therefore believe that it is for the President of the European Federation alone to choose and appoint the members of his/her Cabinet, the other officials of the Executive Departments and the federal diplomats: under his leadership, they are responsible for the administration of the Federation, including the implementation of federal legislation made by Congress. If members of the Presidential Cabinet are not functioning properly according to the House of Representatives or the Senate, those Houses can use their Implied Powers of Congressional Oversight to take such a Minister to task. This is better than letting the Senate decide whether someone nominated by the President as Minister gets the approval of the Senate. In a conflict situation between the President and the Senate, the Senate could

[114] See the Autobiography of Sir Peter de la Billière, Looking for Trouble, HarperCollins Publishers, 1995, p. 275.

abuse its power to obstruct the President. Something that happens regularly in the US two-party system. So, we leave it to the President to appoint his/her own team.

We do, however, allow the European Congress, in Clause 6, to play a role in appointing members of the third power of the trias politica, the judiciary.

Clause 3 is in the American Constitution with the previous Clause 1. We think it is better to separate it from his commandership, because the power to seek advice from his Ministers does not apply to military matters, but to everything related to their work. What is important in this respect is that the European Constitution assumes in so many words that the President has Ministers at his disposal, the Presidential Cabinet. More on this later.

Clause 4, the Presidential power to grant amnesty and pardon, a normal part of any Constitution, has also been separated from Clause 1.

Clause 5 gives the President the right to make Treaties. But it links this to the duty to seek advice and approval from the Senate by a two-thirds majority. This means that, as in the US, the Senate can give its opinion on the conclusion of Treaties by the Federation whenever this House wishes, before and after the treaty negotiations. This provision does not prevent the States of the Federation from continuing to conclude Treaties, provided that they do so within their own policy areas. This is due to the vertical division of powers, explained in Article III. This implies that both levels of government can have their own diplomatic and consular corps. For treaties and diplomats, this is already the case in the European Union. The division of tasks between the consuls of each administrative level can be regulated. For example, by declaring federal consuls exclusively competent to assist (commercial) legal persons. In our view, each State of the United States of Europe remains competent for nationality legislation and thus helps abroad to physical persons with the nationality of that State. The nationality of a Member State is combined with the Citizenship of the United States of Europe.

Perhaps this is the right place to comment on the concept of 'proportionality'. This is an important issue within the current intergovernmental system of the EU. Put simply, it is a question of the extent to which the EU authority - or the authority of a national EU state - may exercise the same power. This concept is directly related to the fact that the EU treaties provide for so-called 'shared powers'. This means that one and the same power may be exercised both by the EU authority and by a State. This raises the question: how far may one and the other go in the exercise of this shared power? In practice, this has proved unworkable. Because the principle of proportionality in its application is measured against the principle of subsidiarity: leave to the States what the States themselves can do best. Because

the hierarchical decision-making of the European Council has robbed the already severely leaking subsidiarity of its meaning, leading to insoluble problems of interpretation. A federal system does not have this problem at all. In a federation, the concept of 'shared powers' is unthinkable, because of the vertical distribution of powers, which is the essence of a federal organisation. A Federation only has 'shared sovereignty': the States are 100% (and therefore not partially) sovereign in all powers that have not been transferred to the Federation. And the Federation, in its turn, is 100% sovereign (i.e., not partially so) in the exercise of that limited set of received powers. Again: a Federation reflects absolute subsidiarity and for that reason this concept is nowhere in our draft Federal Constitution. Nor the EU-nonsense of proportionality.

Clause 6 departs from the US Constitution in that the President's right to appoint judges to the Constitutional Court and to Federal Courts depends not only on the approval of the Senate, but of the entire Congress, including the House of the Citizens. By Federal Courts we mean courts which Congress may establish by law and which, in the hierarchy of judicial power, are just below the highest court, the Constitutional Court. Following the example of the Swiss Constitution for the composition of the Federal Court, we assign these important decisions to both Houses of Congress - with the difference that the European President also plays a role, namely nominating the candidate judges, just as in the US. Since the federal courts and possibly other federal courts must enforce the uniform application of federal law throughout the Federation, we believe that their independent operation is better assured in this way, especially in relation to the States whose law may have to give way to federal law. Moreover, the Federal Courts should have the full confidence of those who made and will make the Federal regulations, together with those who apply them, namely the President and his Government, and who can therefore judge whether the candidates for those courts are competent enough.

Clauses 7, 8 and 9 are not in the US Constitution. We are introducing here three types of referenda that the President can or must organise and in which all Citizens of the United States of Europe who have federal voting rights can participate. We realise that Europe does not have good experiences with referenda as instruments of direct democracy. Their value within the traditional democratic system is disputed. The Philadelphia Convention was already struggling with this in 1787. It had difficulty with Aristotle's concept of 'democracy'. It saw in it a literal application of that concept - namely that every citizen would have a say in everything. That would lead to insurmountable organisational problems. But they were also afraid of the citizen's potential stupidity and susceptibility to influence, leading to poor decision-making, as expressed, for example, in the following sentences:

> "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."

Therefore, after long debates, they decided to opt for representative democracy, in their words a 'republican type of government'.

In the mid-19th century, however, the Swiss dared to enrich their federal constitution with forms of direct democracy. And that seems to work very well. We would like to see this reflected in our version of a federal Constitution for the United States of Europe. Hence the introduction of three types of referenda. We want to eliminate the negative connotations of European referenda, based on the observation that, since 1950, the Citizens have barely been able to express an opinion, let alone decide anything, about the activities of intergovernmental Europe. EU governance since then has increasingly resembled the enlightened despotism of the French Ancien Regime - government for the Citizens but not by the Citizens. We believe that this democratic deficit cannot be rationally justified, because never before in the history of Europe have so many people been so well educated and so well informed as they have been since World War II. Yet they are treated as disempowered children. We believe that it is more necessary than ever to propose referenda in Clauses 7, 8 and 9 of this section.

We propose in Clause 7 that the President of the United States of Europe be obliged to hold an annual consultative referendum on the quality of the federal government of Europe. By doing so, the President will 'poll' what the Citizens of the Federation think about the implementation of the policies assigned to the Federal Authority. The result is not binding on the President, the Congress, or other institutions. However, with the help of the result of this compulsory consultation of the European electorate, federal shortcomings in governance can be quickly and competently identified and resolved. This is a powerful tool for European nation building.

In order to build a European public sphere, we propose in Clause 8 that the President organises a referendum among the Citizens and the States to decide whether or not the United States of Europe should join an international organisation that issues enforceable regulations, and possibly co-found that organisation. Because such regulations could also affect the powers of the States - global negotiations have their own specific dynamics and global institutions their own finality, which is separate from European powers - we also submit such a decision to them. We drew inspiration from the Swiss Constitution. Think, for example, of the 2015 Paris Climate Agreement or the World Trade Organisation. For these policy choices, too, the President is obliged to organise a referendum.

The prior advice of the Senate to the Citizens and the States is in line with the role of the Senate in the conclusion of federal treaties, described in Clause 5.

As a third type of referendum under the presidential power, we suggest in Clause 9, again following the Swiss example, that the President can organise decisive referenda when the Houses of Congress, following an objection by the President, subsequently fail to agree among themselves on that bill. Such a referendum is therefore called an 'arbitration referendum'. This type of referendum is optional. The President him- or herself decides whether to put the Citizens to such a referendum. But their decision is binding. Although our federal constitution provides for final decision-making authority for Congress, the system of checks and balances can lead to deadlock in the event of obstinate behaviour by one of the parties (Congress versus President). If this continues, it is necessary to put an ultimate decision-maker in place. And that can only be the Citizens: the Citizens precede the Federation, the Federation belongs to the Citizens and not vice versa. The Citizens are the alpha and omega: with them the constitution of the Federation begins, with them therefore lies the solution to problems created by the institutions of the Federation themselves. If officials of the Federation use the state system to organise non-decision, we must fall back on those who founded the State, the Citizens.

Explanation of Section 2

In the US Constitution, this article is one continuous text. We find it more convenient to divide it into five Clauses.

Clause 1 deals with the annual State of the Union. Until the administration of President Woodrow Wilson (1913-1921, founder of the League of Nations), this was done in writing in the US. Since Wilson, it has been done through personal appearances in the US Congress. This is an executive task explicitly assigned to the President by the Constitution. He/she is supposed to bring forward everything that he/she considers important as Head of State, Head of Government, Commander-in-chief, Highest diplomat, et cetera. In addition, the President has the power and duty to point out to Congress the need to take measures, as he/she thinks they are useful and necessary. This is the so-called 'Recommendation Clause'. We want to adopt this practice in the European Constitution.

Clause 2 gives the President the right to convene both Houses in extraordinary cases. The US Constitution does not make clear what criteria are to be used to define 'extraordinary'. It has taken place twenty-seven times. The last time under Harry Truman, successor to Franklin D. Roosevelt, at the end of World War II.

Clause 3 requires all foreign ambassadors to present their credentials in a personal interview with the President.

Clause 4 is known in the US as the 'Take Care Clause' or the 'Faithful Execution Clause'. In essence, it is an order to the President to faithfully execute the laws, even if he/she does not agree with them. This is not just about execution itself, but also about realizing the intrinsic intentions of Congress: hence the word 'faithful'. This Clause is held in high esteem in the US and is thus also the source of a strong teleological attitude among those in authority and the citizens. An attitude that manifests itself in a high degree of curiosity about "What would the founding fathers of the Constitution have meant? What goals does Congress want to achieve with that provision in that law?". Nonetheless, it is recognised that the President has broad authority to interpret the intentions of the legislature. But always with the Supreme Court as watchdog, empowered to declare presidential action contrary to the Constitution: "The Constitution is what the judges say it is."

In the context of Clause 4, we reiterate that not only does the US Congress possess so-called 'Implied Powers', but the President has also acquired such implied powers. These include the so-called 'Presidential Executive Orders'. See Chapter 10.

Clause 5 gives the President the power to ensure that all officials of the Federal Government know what their job is.

6.9 Special explanation of Article V, Section 1, Clauses 2 and 3

We now return to Clauses 2 and 3 of Section 1: the power of the President to appoint Ministers and to seek their advice. One sees in this the constitutional authority that the President has a Council of Ministers, in the walk 'The President's Cabinet'. The Constitution does not determine the size of that Cabinet.

The question we must now address is, "How large should the Council of Ministers or the Cabinet of the President of the Federation of Europe be?" To answer that question, we would have to consider the dominant executive policy areas that emerge from Article III, Section 2 (the exhaustive list of powers of the European Congress). But we are reluctant to do so. It is likely that such a consideration will only lead to endless debates, drifting away from the requirements of good governance. Especially since, to us, it is out of the question that every participating country will by definition have a representative in that government, as is currently the case in the European Commission and the European Council. Ministries of the Government of the Federation of Europe must have European legitimacy, not national (= member state) legitimacy.

In order to open the debate on this, we cut the knot in a simple manner: we follow (with two exceptions) the policy areas of the Cabinet of the American President. The reasoning behind this choice is the same as our proposal that the election of the President of the United States of Europe should always take place at around the same time as that of the American President: to create the greatest possible homogeneity between the two federations so that they can do business with each other quickly and competently.

This concerns fifteen ministers:

1) Secretary of State: in charge of the foreign policy of the United States of Europe. On the understanding that the States of the United States of Europe retain their own foreign policy for their substantive domains, with their own Ministers of Foreign Affairs, as is currently the case in the EU and in the Belgian Federation.
2) Minister of Finance (Secretary of the Treasury): in charge of the financial policy of the United States of Europe. Including the federal budget and federal taxes. Including the supervision of the Fiscal Union we advocate.
3) Secretary of Defense: charged with the care of the federal army in all its components: namely, land forces, air forces, naval forces, and militias.
4) Minister of Justice (Attorney General): in charge of all judicial matters.
5) Secretary of the Interior. This American Secretary of the Interior is not comparable to the Secretary of the Interior as we often know it in Europe. In this case, it is about the care for the transnational spatial planning, with an emphasis on the care for the preservation of the quality of life.
6) Secretary of Agriculture: responsible for agriculture, stock breeding, fisheries, and horticulture, as well as food security (production, distribution and supply) and food safety (healthy food).
7) Secretary of Commerce: responsible for the economy, trade, competition policy and intellectual property.
8) Secretary of Labor: responsible for employment and working conditions.
9) Secretary of Health and Human Services: responsible for health and social services, including poverty reduction.
10) Secretary of Housing and Urban Development: responsible for public housing and the development of urban areas.
11) Secretary of Transportation: responsible for all transportation of persons and goods for each mode of transportation between the States of the Federation, including the construction of transnational infrastructure.
12) Secretary of Energy: responsible for energy supply and distribution, as well as for the promotion of clean energy and energy saving measures, and the issue of climate change.
13) Secretary of Homeland Security: responsible for ensuring homeland security, combating terrorism within the Federation, and responding to disasters.

Two ministerial posts from the American Cabinet do not seem applicable to the United States of Europe, namely:

- The Minister of Education: we see the concern for education and related matters, for example vocational training, as a matter and task for the States, not for the Federal Authority.
- The Minister for Veterans Affairs: to the extent that this would be a relevant policy area in the United States of Europe, we consider it a joint task of the Ministers of Defence and of Health and Social Affairs.

Instead, we propose:

14) Minister of Science Policy and Innovation: in charge of supporting basic scientific research, ensuring innovation in areas such as electronic traffic, product innovation and the creation of new educational systems.
15) Minister of Cultural Relations and Immigration: responsible for ensuring good relations between the peoples of the member states, for the interests of regions and populations with their own language and culture, and for migration policy.

See here the possible fifteen federal ministers as members of the Cabinet of the President of the United States of Europe. And thus, no twenty-seven or more Commissioners to satisfy the national interest or honour of each Member State in the EU. Let alone a European Council. It is up to the Citizens' Convention to propose an initial set of Ministers of the Presidents' Cabinet.

This list also defines the limited and exhaustive list of general European interests to be promoted by the federal body.

6.10 Explanatory Memorandum of Article VI: The Judicial Branch

Article VI deals with the third component of the trias politica: the Judicial branch. As mentioned earlier, it is not possible at this time to determine whether all the institutions of the European Union, including the Court of Justice, are also institutions of the new Federation. This could be done by applying Article 20 of the Treaty on European Union: at least nine Member States may enter into enhanced cooperation without prejudice to the internal market (the safeguarding of the customs union, currency policy, competition policy and trade policy). In our view, such an enhanced form of cooperation could take the form of a Federation. In that case, there would be no need to establish a European Court of Justice for the Federation. The Court would then take on that function. If such an Article 20 Federation is not considered an enhanced cooperation, it remains possible for Citizens and States - like the United Kingdom - first to leave the EU (Article 50 of the Treaty on European Union), then to form a federation in its own right, and then to become a member of the EU as a Federation (Article 49).

Now first the judiciary with a Court of Justice at the top. In our opinion, a system of lower federal courts in the member states of the Federation is needed below this. We therefore first describe in broad outline what that judicial system looks like in the United States. This is followed by the articles of our draft.

As long ago as 1789, the US Congress laid down by law that the federal judiciary would consist of three layers. The first layer is occupied by the Supreme Court. Under it, there are nineteen federal courts of appeal against the judgements of the ninety-four federal district courts below it. In addition, each State has its own courts and thus its own State Supreme Court.

Note: the power of Congress to establish lower federal courts implies the power to abolish them as well. In the US, this sometimes happens in the power struggle between the President and Congress, when the majority in Congress is not from the President's party. In order to prevent the President from using his presidential power to appoint judges (after advice and approval from the Senate) only to put party members in such positions (which Trump did on a large scale), it can happen that the opposition in the Senate blocks these appointments. This is what the Republican-led Senate did under Obama. If such a lower federal court were to be without judges for a long time (because the previous ones had retired or left for other reasons), it would happen that Congress would close down such a court.

The Supreme Court rules in matters of the federal government, in disputes between States and in the interpretation of the US Constitution. The Constitution does not give the Supreme Court the right to declare laws contrary to the Constitution in so many words, but in a dispute in 1803, the then President of the Supreme Court established or claimed that power for the Court. This so-called 'Judicial Review' implies the power of the Supreme Court to declare a law of Congress or a measure of the executive branch contrary to the Constitution. The Supreme Court's decision is a precedent for similar cases in the future. The Supreme Court acts as an appellate body to decisions of the nineteen federal courts of appeal.

At the lowest level, the federal district courts have jurisdiction in disputes relating to the federal system, and in matters between litigants who do not reside in the same State. Decisions of these courts may be appealed to the nineteen courts of appeal. These federal courts are thus based on Article III of the American Constitution (in our draft Article VI) and are therefore called 'constitutional courts'.

The courts of these three tiers have general jurisdiction. They handle criminal and civil cases. In addition to this three-tier structure, there are special courts, for

example for bankruptcies (Bankruptcy Courts) or taxes (Tax Courts). However, these have a different status. The Bankruptcy Courts are considered 'below' the district courts and therefore do not fall within Article III of the US Constitution (in our draft Article VI). Their judges are not appointed for life and their salaries can be adjusted. The Tax Courts do not fall under that Article III either, but under Article I, Section 8 (in our draft Article III). It is a so-called 'legislative court'. Note that the US Constitution thus gives Congress the power to establish courts in two places - Articles I and III, in our draft III and VI.

In addition to acting as an appellate body, the Supreme Court rules on disputes concerning the interpretation of the Constitution, treaties and matters that affect Ministers or Ambassadors and Consuls of other powers.

Federal judges are appointed for life. This means that they remain in office until they die, voluntarily resign, or retire. If they commit a serious crime, they are also subject to the procedure of impeachment.

In addition to this three-tier federal judiciary, the States themselves have courts. This makes things rather complicated, because it happens under circumstances that federal courts may interfere in conflicts at the level of a State, and vice versa that courts of a State may rule in disputes of a federal nature. The courts of a State administer justice on the basis of the laws of that State. And thus, also with the procedural law of that State. Each State also has its own Supreme Court. In principle, this Supreme Court of each State is the court of last instance. But in many cases, decisions of that State Supreme Court can still be appealed to the Federal Supreme Court. The State Supreme Court is bound only by interpretations of the Constitution by the federal Supreme Court, not by decisions of lower federal judges.

The US Constitution does not specify the number of judges on the Supreme Court. However, for many years it has consisted of nine people: the Chief Justice as the presiding judge and eight others. All are appointed by the President after approval by the Senate. The Court has no separate chambers and always rules jointly, by majority vote. Pleas for the establishment of Chambers have always been rejected by the Supreme Court on the grounds that there would then be more than one Supreme Court.

Now to the relevant Articles of our draft Federal Constitution.

<u>Explanation of Section 1</u>
The US Constitution only provides that there shall be a Court of Justice. Its members are appointed by the President - which we adopt for the United States of

Europe, but after approval by both Houses of the European Congress. It is up to the President to decide how many judges he/she wishes to appoint.

It is then up to the European Congress to decide whether there should be lower federal courts below them, so-called constitutional courts, in addition to and separate from the courts that each State establishes itself. Note that Article I, Section 8 also states, in the exhaustive enumeration of the powers of the US Congress, that it has the power to establish federal courts. However, as mentioned earlier, these have different powers than the federal courts under Article III. The Article I ones are called 'legislative courts' (a kind of administrative jurisdiction, e.g., the Tax Court), whose rulings can still be submitted to the Article III 'constitutional courts', apart from exceptions to this rule. We adopt this American approach: there should be one Court of Justice for the United States of Europe - possibly the Court of Justice of the EU, if the Federation can make use of the already mentioned EU procedure of 'enhanced cooperation' under Article 20. Whether and which other federal courts should be established is left to the European Congress.

The Section 1 requirement of good behaviour of judges means that they may continue to work until they retire unless their behaviour leads to impeachment by Congress. This has happened fourteen times in the US. It is also stipulated that their salaries may not be reduced, but may be increased, in order to avoid pressure on their independent judiciary. It is up the European Citizens' Convention to decide if the judges term should be limited to, let's say, fifteen years.

Explanation of Section 2

Section 2 deals with the jurisdiction of federal courts. Although the Constitution does not say so in so many words, they have the power to declare rules and executive measures invalid on constitutional grounds. They may review laws against the Constitution because it is the highest form of law. There has been much debate about this in the US. One can ask the question: who is the boss here? If the legislator makes a law, it applies to everyone. But if a judge considers such a law contrary to the Constitution, that validity falls away. Federal judges (including those lower than the Supreme Court) can therefore 'overrule' the legislature.

Alexander Hamilton, in No. 78 of The Federalist Papers, provided a clarification on this point that to this day stands as the prevailing doctrine:

> "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."

So, we follow Hamilton in his reasoning that a Constitution is the most fundamental law, of and for the people. Consequently, that law takes precedence over all other laws. This means that the Constitution in the United States of Europe is the judicially enforceable law of the highest order. It is truly 'a Constitutional Law', i.e., it is more than a 'Convention of the Constitution' or a moral-political agreement that can hardly be invoked in court.

Clause 2 of Section 2 provides that for suits to which a State or States, Ministers, Ambassadors and Consuls are the only parties, only the Court of Justice shall have jurisdiction at first and last instance. This exception to the principle of jurisdiction at first instance and on appeal is dictated by the delicate nature of such litigation, where the immunity from jurisdiction of member States or foreign officials within and outside the United States of Europe is at issue.

With Clause 3 of Section 2, we introduce jury trial in the United States of Europe. At least for crimes specified by law. A thorny issue in many countries. We are familiar with the fierce debates of those for and against this. Our argument for taking this step nevertheless lies in the all-important element of federal thinking: the Federation belongs to the people. When in doubt about the right way of constitutional and institutional design, it is wise to take the people as the starting point. Therefore, for certain crimes, jurisdiction by a jury, assisted by professional magistrates. It is for the Citizens' Convention of Chapter 7 to judge this.

Explanation of Section 3
We assume that these provisions require no further explanation.

6.11 Explanatory Memorandum of Article VII: The Citizens, the States, and the Federation

This first Article of a series of general provisions concluding the draft of our Constitution outlines the further elaboration of the federal system. That is, the relationship between the sovereign federal authority and the equally sovereign

authority of the member states. The all-important formula of the vertical separation of powers is thus explained in the Constitution in five stages:

- The first stage is in Article I, Section 2 which says that what is not expressly given to the Federation belongs to the complex of powers of the States and of the Citizens.

- The second stage is Article III, Section 2. That specifies limitatively those federal powers.

- Stage 3 is Section 3 of Article III which specifies the limits within which those powers of the Federation must be exercised for the protection of the Citizens.

- Stage 4 is Section 4 which sets limits to what the Federation and the States may do.

- And then, finally, there is Stage 5 in this Article VII which makes it even more clear how some aspects in the Federation-States-Citizens relationship must be understood.

Section 1, Clause 1, states in its first sentence that every Citizen of an affiliated State is also a Citizen of the Federation. Citizenship of an affiliated State goes hand in hand with Citizenship of the Federation. As soon as a person possesses the nationality of an affiliated State, he or she also has federal Citizenship. One receives a single passport, issued by one's own State, stating Citizenship of the Federation. This means, among other things, that he or she has the federally granted political and other rights and that he or she can also call on its diplomatic or consular services outside the Federation in matters for which they are competent. The latter implies that those federal services must allow Citizens of the Federation, residing outside the Federation, to participate in elections for the House of the Citizens and the President/Vice-President.

The second sentence of Clause 1 prevents States from discriminating against Citizens of other States in favour of their own Citizens or stated positively: all Citizens of the Federation are entitled to equal treatment with the Citizens of that State under its legal order in all States other than their own. All Citizens are entitled to 'national treatment', as it is called, in each of the States of the Federation.

Clause 2 regulates a People's Initiative to create a federal law, based on Swiss examples at federal and cantonal level. This makes Clause 2 an innovation for Europe. In the sense that the bill of a sufficiently large number of Citizens is not just a petition to put a subject on the political agenda or to have a legislative action

taken by the political institutions. Our European People's Initiative goes much further than the Citizens' initiative in the EU where the EU-institutions can file such petitions from voters without any result. This provision puts pressure on Congress to decide along the lines of the People's Initiative through the Citizens and the Parliaments of the States, with the assistance of the President.

The third Clause of Section 1 provides for extradition of suspects between States as the flip side of the free movement of persons in the Federation. The fourth Clause of Section 1 reaffirms the principle of prohibition of slavery and forced labour. Section 2(1) requires States to recognise the practice of law in the other States of the Federation as of right. Thus, the States do not subject each other's law to evaluation, but let it apply to them. Among other things, this provision avoids administrative burdens for citizens, administrations and judges concerning the use of official documents. In the Federation of Europe, therefore, any requirement for legalization of documents drawn up by a State is waived; these documents therefore have legal force in other States of the Federation.

Clause 2 of this Section 2 means that only the States of the Federation have competence in matters of Nationality or Citizenship with all the political and social rights attached thereto, although the Federation becomes competent for immigration policy. Each member State recognises the Citizenship of another State and, according to its legal order, treats the Citizens of that other State as its own Citizens. This also implies that all the States of the Federation provide help and assistance to each other's Citizens abroad through their diplomatic and consular services where necessary.

Clause 3 of Section 2 provides for the possibility of other States acceding to the Federation after its foundation.

We have added Clause 4 in order to make clear the conditions of accession: the acceding State retains its debts and must apply the federal rules in force from the time of its accession. Both conditions are imposed so as not to jeopardize the continued existence of the United States of Europe. For the record, this applies to States that accede after the Federation has already entered into force. For States which, at the time of ratification, are already acceding themselves, we stipulate in Article X that the Federation shall support them in the payment of their debts and the fulfilment of their contractual obligations by taking over, as a Federation, the debts of those States.

Section 2 also stipulates, in Clause 5, that any change in the number of States in the Federation Europe, by merging or splitting States, shall be submitted to the Citizens concerned, to the Parliaments of all the States and to the European

Congress. The reason for these various authorizations is that they alter the balance of power between the States and within the Federation, institutionally for example, by affecting the composition of the Senate. This provision is important for regions with activist groups that aspire to establish their own state, such as Catalonia in Spain, Corsica in France, Flanders in Belgium and Scotland in the United Kingdom.

We are therefore departing from the American Constitution which, in its Article IV, Section 3, states that it is not permitted to create a new State within a State of the American Federation, nor to merge States. We think that our proposal for the European Federation is more appropriate because Europe has not yet fully overcome its political past, within and between the States. Not every nation feels comfortable within the borders drawn after wars over the past two centuries.

Section 3 explicitly underlines the sovereign character of each Member State, which is also guaranteed by the Federation. Just as the Swiss Constitution guarantees the existence, status, and territory of the cantons.

Clause 2, that the Federation shall not interfere with the internal organisation of a State, we have added, again inspired by the Swiss State system in which the cantons organise themselves and the Federation protects their loyal Constitutions. The States of the United States of Europe thus remain competent to establish their own institutions. The fact that a State is itself also a Federation - this is already the case in the EU with Belgium, Germany, and Austria - does not constitute a problem, provided that the federal organisation of that State does not conflict with the federal Constitution of Europe.

Clause 3 needs no explanation, because it arises from the functional sovereignty of the Federation over its territory. It does not affect the separate sovereignty of the Member States over their national territory. The United States of Europe therefore does not intervene in the alteration of borders between the States.

As an aside, we would like to make a comment on Section 3, Clause 2, which states that the United States of Europe may not interfere with the internal organisation of each State. The creation of a federal state system will undoubtedly affect the way in which the participating States view their own internal organisation, because we will be dealing with a layered system of governance. But it cannot be repeated often enough that the federal body has no hierarchical authority to interfere with the internal structure of a member state. A federal state is not a supranational state of which hierarchical decision-making is a feature.

6.12 Explanatory Memorandum of Article VIII: Changing the Constitution

Article VIII balances between the harshness of the original 'Articles of Confederation' (1776-1787) which, with its unanimity requirement, did not allow for much, if any, amendment of the confederal treaty, and an overly soft application of majority decisions that - under the pressure of the political frenzy of the day - would introduce constant changes to the Constitution, making it unstable. This Article VIII, therefore, tries to safeguard the fundamental character of the Constitution, but at the same time to offer room for the need to adapt, from time to time, that basic document of an organisation such as the Federation Europe to changed circumstances and changed insights.

The American founding fathers essentially built in checks and balances here again by having the decision-making on Amendments to the Constitution take place by weighing up federal insights on the one hand against member state insights on the other. See Chapter 8.

We go one step further by explicitly allowing the citizens to have their say first. This too is taken from the Swiss Constitution. If the Citizens do not ratify the proposed amendment by a three-quarters majority, the legislatures of the States and the Houses of Congress do not need to do so. In addition to this addition to the American Constitution, we have also simplified this Article, compared to the relevant Article V of that Constitution.

6.13 Explanatory Memorandum of Article IX: Federal Loyalty

The first Clause of this Article makes it clear that the Constitution, together with federal laws and treaties, constitutes the fundamental law within the federation and that everyone has to comply with it. Also, the judges of the States. State law - whether in a State Constitution or in state laws and regulations - may not conflict with the federal Constitution. So, trying to 'nullify' a federal law in a state law is not possible. For the rest, the States are free to make the laws they see fit. In order to ensure that respect for the Constitution is observed, the second Clause provides that those in positions of responsibility must take an oath or pledge, which, incidentally, exempts them from an enquiry into their religious beliefs.

6.14 Explanatory Memorandum of Article X: Transitional Measures and Ratification of the Constitution

Article VI of the US Constitution gives States that would accede to the Federal Constitution the opportunity to enter into Federation membership knowing that they would be supported by the Federation in meeting their financial and contractual obligations that they had prior to signing the Constitution. In the first Clause of our Article X, we adopt this arrangement. Debts and contractual obligations of those Member States - contracted before their ratification of the

European Constitution - are also valid vis-à-vis the United States of Europe. The Federation thus helps them, among other things, to meet their financial and contractual obligations, as is already the case in the Eurozone to keep impoverished EU countries afloat. The Eurozone realizes that a common currency must have a common economic base; this should be no different in the United States of Europe as we outline it in this Constitution. As stated in Chapter 3, this support can be significantly improved by establishing a Fiscal Union in the federation.

After the Constitution comes into force, member states that do not get their finances in order cannot count on amalgamation of their debts by the federal government again. In order to safeguard the functioning of the United States of Europe, States that join the Federation after its creation will not be able to benefit from this aid. These States will therefore have to put their financial affairs in order before being admitted.

As has already been mentioned several times, the drafters of the American Constitution were bold enough in Article VII not to require (as the Articles of Confederation required) the unanimity of the States concerned, but to state that the Constitution would enter into force upon nine ratifications out of the envisaged thirteen. It must be said that they were not so much aiming at the number 'nine' as at the fact that nine was a two-thirds majority of thirteen. For us, a two-thirds majority is not so relevant because the Treaty of Lisbon, in Article 20 of the Treaty on European Union, provides the basis for enhanced cooperation by nine Member States. That is enough to keep the number 'nine'.

6.15 Conclusion

So much for the draft Constitution for the United States of Europe. Short and to the point - bearing in mind Napoleon Bonaparte's 1804 statement: "The best constitution is the concise and pithy one." A long way from the legal monstrosity known as the Lisbon Treaty with its more than 400 complex articles and many derogations. Leave that Treaty intact for now to accompany the dying process of the intergovernmental operating system. But use the only appropriate political instrument for the creation of the United States of Europe, namely a true federal Constitution. This is the leap that is needed now, while the EU is falling apart. This is perhaps what former Commission President Romano Prodi meant in 2000 when he said: "Great reforms will make a great Europe."

Let us recall once again that the American founding fathers gave substance to Prodi's statement avant la lettre back in 1787 by committing three acts of gross disobedience. Firstly,

by disobeying the order to meet in Philadelphia to amend the Confederate Convention. They turned their backs on the Confederate Convention and designed a federal Constitution. Second, by submitting the draft of that federal Constitution not to the Confederal Congress for ratification, but to the citizens of those States through a system of electoral delegates. Thirdly, they ignored the treaty requirement of unanimity: if the Citizens of only nine States agreed, the Constitution would enter into force. Three steps out of the box; a paradigm shift of the purest kind.

Do not say that this draft by analogy with the US Constitution is alien to European political culture and philosophy and should therefore be rejected. Those who say that do not know the history of Europe. What the Americans drafted at the end of the 18th century was directly derived from the constitutional and institutional thinking of the European political philosophers of the time, including in particular Montesquieu, Rousseau, and Locke. So, a federal Constitution for Europe on the American model, but based on European ones, is nothing other than finally coming home. What the Americans realised only eleven years after their independence in 1776 - finding one authority that encompasses them all as a remedy for degenerating fragmentation, from which Europe suffers more than ever - Europe is only now about to achieve, more than two hundred years after the French Revolution. We can be amazed and annoyed by it. Better to be glad that it finally seems to be happening.

An additional advantage of this type of Constitution is the high degree of difficulty in adapting it. The conditions for adapting it are a great guarantee against influence by national or even nationalistic tendencies of member states. Without falling into the almost endless revision procedures and unattainable unanimity in the European Council and the improbable approval of all national parliaments required by the Treaty of Lisbon. No European state can reasonably dispute the correctness of this concise Constitution: it does not threaten any existing right or interest of any state, but places the responsibility on the higher, European level where it must be placed, in order to meet global challenges. It is precisely the phenomenon of intergovernmentalism whereby each Member State wants to see its own interests incorporated into the treaty that binds them together almost definitively that breaks down the commonality. A compact Constitution such as this leaves no doubt as to the extent of the commonality and offers no room for Member State particularism. The fundamental strength of this Constitution is the distribution of horizontal power over the trias politica and the distribution of vertical power over sovereign powers of a federal authority and sovereign powers of the States. There is no political hierarchy between the two levels of government.

We are also well aware that the choice to come as close as possible to the American Constitution does not in all respects reflect European reality. We may have taken some issues too literally, or amendments may not have been properly incorporated into this draft. We are also refraining from commenting on the practical functioning of this system. As has been the case in the United States - for example, the shift of more power to the federal authority, including the President - the operation of a federal Parliament, Government and Court must also develop its own process in Europe.

Finally, this. The ratification of this European Constitution is a task and a matter for the Citizens of Europe. Not of the current European Parliament, not of the European Council, not of the European Commission, not of the national Parliaments or their Governments. But of the Citizens. Those who doubt whether there is support for such an approach may be convinced by the following quote from the Berlin Europe speech by Federal President Joachim Gauck on 22 February 2013:

> "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. ... Europe now needs people who think, but need banners, and people who think, but need leaders. ... 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 speaks a European federalist of the highest order. It is on this statesman-like wave that we offer our draft European Constitution to the Citizens of Europe. After the Citizens' Convention has improved this draft federal constitution for Europe, the Citizens of Europe will decide what to do with it.

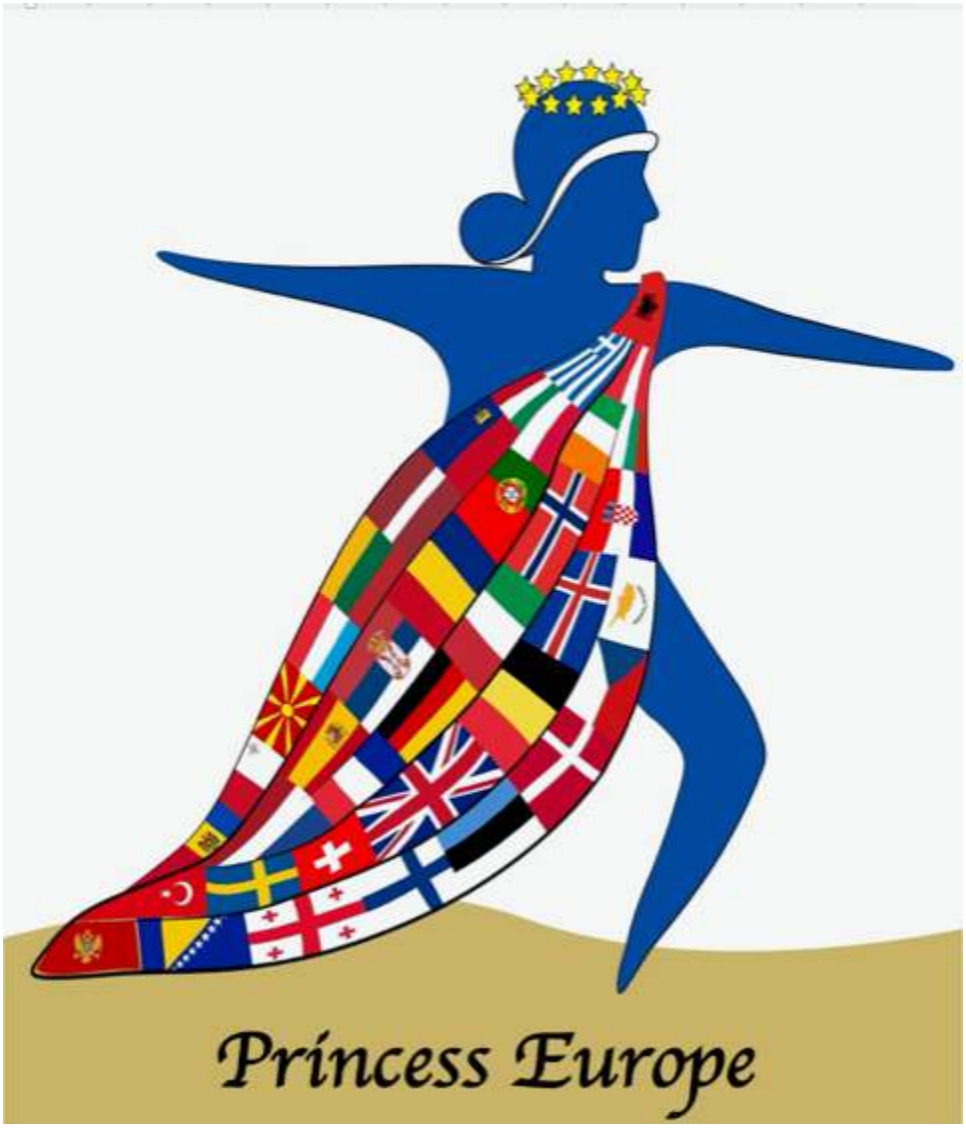
6.16 Princess Europe

If the people of Europe ratify this draft of our federal Constitution - after it has been further improved by a Citizens' Convention (see Chapter 7) - the legend about Europe's origin will be revived. In ancient Greece, Europe was a Princess. While dancing on the beach, she was seduced by Zeus - transformed into a white bull -

and carried off on his back to Crete. This has been depicted in countless paintings and sculptures.

In the context of their European Federal Papers (2012-2013), Leo Klinkers and Herbert Tombeur have had this image designed. A dancing Princess Europe adorned with all the flags of the member states.

A white T-shirt with this image can be ordered here.



7. THE EUROPEAN CITIZENS' CONVENTION

7.1 Forget it! It has been tried many times before

Obviously, one could comment that there is no point in trying, once again, to create a federal Europe. After all, every single attempt since 1800 has failed. Anyone who is a bit interested in this theme will know that in the course of the 19th and 20th centuries many conferences took place on a pro-federal basis. The dominant feature being the compelling political presence. It was certainly the case – especially following the First and Second World Wars – that non-politically bound federalists regularly stoked up the fire of European federalism, yet these attempts always petered out as soon as they ended up in the hands of political parties and national parliaments. This has been discussed in detail in Chapter 4.

This does not mean that, since the Versailles Treaty of 1919, the end of the First World War and the arrival of the famous but slowly forgotten League of Nations, little or no attention has been paid to federalism within political parties. Under the auspices of the United Nations, which was founded in 1945, the federalist fire was kept alive for some time within Dutch political parties. For example, the list of members of the Dutch Council of the European Movement, set up in 1947, consisted of an umbrella association of a number of European-focused organizations, twenty-nine members of the House of Representatives and eleven from the Senate. But people were always too scared to take the step of fulfilling the concern for common European interests by sharing – not transferring – national competences with those of a federal body.

When the European Coal and Steel Community (ECSC) was established in 1951– based on the 1950 Schuman Declaration – as a combination of six countries collaborating on the basis of policy and not on the basis of sharing competences, many a politico-related federalist breathed a sigh of relief: federalization seemed to be no longer needed to be advocated because it was assumed that the treaty-based intergovernmental operating system of the ECSC would eventually evolve into a federal system for the whole of Europe. This way of thinking still exists within parts of the European Parliament, based on the assumption: 'If you change the underlying treaties frequently, a federation will automatically emerge'. On the contrary, it only serves to weaken the treaties even further. This is explained in detail in Chapter 2.

7.2 One attempt has never been made: using the Philadelphia Convention as the best practice

Between 1800 and today one attempt at federalizing Europe has never been tried: taking the Philadelphia Convention – the best practice – as a benchmark. Bring together a small group of professionals to draft a federal constitution, submit this

draft to the people of Europe for ratification, state that it will enter into force if the Citizens accept it by a majority and then transform the EU into one federation.

Thus, the answer to the question as to 'How should we create the United States of Europe?' can be brief: by following as much as possible the same path as the successful Philadelphia Convention did. Which argumentation could be strong enough to be able to ignore this best practice as an example of knowledge and insight with the aim of replacing an incorrect administration-system with a healthy system, and the courage to act in accordance with this knowledge?

The choice of using the Philadelphia Convention as a best practice is based, among other things, on the following quotation from Niccolò Machiavelli in Chapter VI:

"For as men almost always follow the beaten track and conform to the ways of others but are unable everywhere to follow fully the paths of those whom they imitate or to equal their qualities, a wise man must always follow the path taken by great men before him. And he should imitate those who have been exceptionally great personalities, so that even though his qualities may not be as great, he is at least somewhat a reflection of them. And he should act like skilled archers, who, when they consider the target they want to hit too far away, because they know the power of their bow, take the aim much higher than the target, not in order to get so high with their arrow, but to be able to reach their aim with the help of that higher aim."

7.3 How should such a Convention be structured?

7.3.1 How many participants should the Convention encompass?

The Philadelphia Convention had only fifty-five participants. Approximately twenty invited representatives of the various states did not turn up. But this small group laid the foundation for what would become the most powerful country in the world. And their product – a Federal Constitution – would subsequently serve as a model for another twenty-six federations around the world. See Annex. 1.

We favor a Convention of fifty-four members: two per EU country. The figure of fifty-four is a matter of principle. If fifty-five Americans with the political, philosophical, and political knowledge – plus the political courage - of the time managed to design the constitutional foundation for what became the most powerful federation, then with fifty-four European people and with much more knowledge – especially of past failures – we must certainly succeed. If not, we should be ashamed of ourselves.

7.3.2 Which error is prohibited per se?

This idea of a Convention after the example of the one in Philadelphia – and therefore of a limited number of Members, has always got the same reaction:

"Surely you have to involve a lot of people in such an important subject. You have to involve hundreds, if not thousands, of European citizens in the design of a federal Constitution, otherwise you will not have any support and commitment."

And more of such well-intentioned but ill-considered remarks. They are also fed by the fact that in more places in Europe the usefulness of, and need for, Citizens' Conventions has been promoted. In various versions. For example, several different Conventions throughout Europe, or one very large Convention containing a huge number of participants, spread over months of work.

The answer to such observations should be: "Do you ever sit in an airplane?" If that question is responded affirmative, the next question must be: "Did you help build that plane?" Of course, the answer is always in the negative. After that, it's easy: "You didn't help building that plane and you know that planes can fall from the sky. Yet you step into it. From what do you derive your support and commitment to step into a plane?"

This usually serves to clarify that designing an important product – in this case, a Federal Constitution for Europe to protect the free personal development of more than five hundred million Europeans – is a matter for professionals. For constitutional experts. So, with an explicit ban on leaving that costly and complicated work to amateurs.

Does this mean that no efforts should be made to secure the support and commitment of the people of Europe with regards to a federal constitution? On the contrary. Gaining support and commitment by involving Citizens thoroughly, is just as important as making a professional Federal Constitution. But that has to be organized differently. Not by involving hundreds or even thousands, just like that. We will revisit this matter in detail later.

7.3.3 What is the profile of the members of the Convention?

Next, let's focus on the profile of the fifty-four members of the Convention. This doesn't concern the individual profile of each member, but rather the profile of the level of knowledge required to be present in the Convention as a whole. These fifty-four members, together, must guarantee the presence of three knowledge complexes:

(a) Knowledge of basic federalism and its history.
(b) Knowledge of constitutional law and legislative technique.

(c) Knowledge of a handful of common interests such as the care of a communal European defense policy, foreign policy, financial-economic policy, climate and energy policy, immigration policy, the harmonization of taxes and various other interests that cannot be taken care of by individual Member States and that are therefore the reason for establishing a Federation.

The latter knowledge complex, the presence of knowledge of a number of specific policy areas, is necessary because the Federal Constitution has a Memorandum of Explanation. See Chapter 6. This article-by-article explanation will clearly state the common European interests for which the federation is to be established.

It is important to note that the Convention's interpretation of common interests is only a global one. This exhaustive list serves as a context and will at a later stage – in a democratic context – be further fleshed out in terms of policies, based on political negotiations between the parties populating the two Chambers of the Congress. The Convention will focus primarily on the construction of the federal system. This is a task and a matter for the people, in accordance with the principle of 'All sovereignty rests with the people'. It must not be the case that the Convention is dominated by discussions on the substance of policy. That is a task and a matter of political consideration. The content of the federal policy areas falls within the remit of the federal European Congress.

There is another profile requiring our attention: the male-female ratio within the Convention. The distribution must be 50-50. This will be a challenge, because Europe has no tradition of taking the equal presence of women in leading positions as a matter of course, and, therefore, of organizing it in a straightforward manner.

7.3.4 Who selects the members of the Convention?

The fifty-four members of the Convention are selected by the Board of FAEF, assisted by European federalists. They are located all over Europe and know each other. Together with them, the organizers of the Convention organize a socalled Environmental Analysis. This is an analysis to source, based on the three aforementioned knowledge complexes, those men and women who can be potential members of the Convention. From this analysis fifty-four people will be selected. There may be potential members left after this selection. They will be invited to be available to support those acting as members of the Convention.

Based on the same selection criteria, observers from countries that are currently in the EU-watch chamber may be invited to take part in this process and be present in the week when the Convention takes its final decisions. Observers will not have the right to vote.

7.3.5 Are politicians welcome as members of the Convention?

The answer is: no, unless... Politicians have had two hundred years to transform Europe into a federation. The political-philosophical and constitutional knowledge was present. As was the example of America. The creation of twenty-six federations following the example of the American one has also existed for some time. By failing to learn from this, politicians are guilty – since the French Revolution of 1789, two years after the creation of the American federal Constitution – of the deaths of hundreds of millions of soldiers and civilians. And trillions in damage inflicted on nature, the environment, art and property. So, politicians can only be accepted as members if they abundantly meet one of the three knowledge requirements as mentioned. Not in their capacity as politicians.

The argument that today's politicians cannot be blamed for what their peers have failed to do since 1789, and for what they have done wrong, does not hold water. For the sake of brevity, we like to refer to the systematic lack of knowledge and political courage on the part of the current EU leaders, and in particular of the members of the European Council.

The position of refusing politicians in their capacity as politicians has an extra cause in addition to the two hundred years of failure mentioned above. It stems from the wrong design of the European Convention on the Future of the European Union (February 2002-July 2003, aimed at creating a federal Europe) under the leadership of the French statesman Valéry Giscard d'Estaing. The dramatic outcome of this Convention has been discussed in detail in 2.20. So, we will pass over that here. The initiative, twenty years after that tragedy, to organise another Conference on the Future of Europe in 2020 (aimed at strengthening the intergovernmental character) will not be considered here either because the predictable failure of that conference too has already been discussed.

The failure of the completely politically-driven Convention of 2001 and the even worse politically-driven organisation of the Conference of 2020 (which is still not operational because of the corona crisis) is why the rule of 'qualitate qua' – in the sense of allowing politicians to participate in the composition of a political document of the highest order, just because they are politicians – is the most serious mistake to be made. Only knowledge must be the ticket to get a position in the twenty-four gathering of the European Citizens' Convention, mandated to improve our draft federal constitution as the constitutional foundation of a prosperous, safe, and just life in Europe.

7.3.6 What is the task of the Convention?

The Convention has the task of improving the draft federal Constitution that Leo Klinkers and Herbert Tombeur have designed in the aforementioned European Federalist Papers in 2012-2013, after which Leo Klinkers has improved that draft slightly. See Chapter 6.

The draft contains only ten articles: three more than the Federal Constitution created by the Philadelphia Convention. It takes the US-constitution as best practice, as the benchmark. Not with the aim of copying it, but in view of transforming it into a Constitution for a Federal Europe. Klinkers and Tombeur improved parts of the US Constitution because the current European political and social relations allowed for these improvements. They took on board several aspects of the twenty-seven Amendments that in later years would be added to the US Constitution. And they also introduced some elements of direct democracy from the Swiss Federal Constitution. And yet this draft Constitution is confined to ten articles. There is no need to include more to keep twenty-seven-plus countries together within a European Federation, under the guarantee of preserving their sovereignty, autonomy, and cultural identity.

A Constitution of only ten articles is not only a practical argument from the point of view of careful legislative technique. It is also a matter of principle. When making legislation, one all-important criterion applies, a criterion that should be repeated over and over again: to regulate only generally binding rules. The more parties are affected by legislation, the more observations they will make, the more they will all want to see things regulated on the basis of their own national, regional, or institutional interests, the more exceptions they will demand to these generally binding rules, the fewer the number of common interests will be and thus the smaller the number of rules to be made. Therefore, one should make only those rules that all stakeholders feel must be binding for all of them.

The Treaty of Lisbon is precisely the opposite. With its two sub-treaties it contains over four hundred articles, often of a contradictory nature, plus a staggering number of exceptions to the general rules in order to please certain member states. That is why the Treaty only serves an accumulation of national interests, not European interests. The way in which, in recent years, some EU-countries have flouted the rules of the Treaty – because they have not served their national interests – says everything.

We know that such an approach will meet with at least one criticism: "From where you get the guts and the knowledge to create a draft of something as great as a European Federal Constitution?" The answer is a question in return: Can a baker bake bread? Constitutional law is Klinkers' and Tombeur's scientific and practical

background. Moreover, there are authoritative examples of cast-iron Federal Constitutions. If, on that basis, they had been unable to improve upon the American Constitution, they would have had to return their academic diploma.

The present design of the draft federal Constitution (in Chapter 6) is excellent. But we are well aware that there is always room for improvement. That is why it is the task and duty of the Convention to work on that draft and improve it where necessary. In other words, the Convention does not start from scratch, but takes our draft as a basis.

7.3.7 How much time is needed to carry out that task?
To finalize the draft federal constitution the Convention does not need to last any longer than a week, from Monday to Friday, with a daily schedule as follows.

Monday: arrival of the members, transportation to the hotel, a joint dinner and discussion of the work for the next few days.

Tuesday: Members decide by a majority on the content of each of the ten articles: five in the morning and five in the afternoon. This has been thoroughly prepared in advance. We repeat: these are articles that are generally applicable, and which serve the European interests by providing a limitative list of the common interests of the Member States. There is no room for the inclusion of any national interests, let alone for exceptions to the general binding rules. There will be no more than ten articles. Anyone can think of several hundred articles. But it is about discipline, that can best be expressed by the German saying: 'In der Beschränkung zeigt sich erst der Meister', the unforgettable words with which J.W. von Goethe made clear, in 1802, what a pupil needs to do if he wants to become a teacher ('It is in the restriction that the master reveals himself').

Wednesday: a majority of Members will decide on the content of the Explanatory Memorandum to the draft Constitution of Chapter 6. This Memorandum concerns a General Explanatory Note, as well as an article-by-article Explanatory Note. This was missing from the draft American Constitution in 1787, a lack which was largely remedied by the aforementioned Federalist Papers of Madison, Hamilton, and Jay. In those eighty-five Papers, the three men explained – and defended – what the Founding Fathers meant with the seven articles of the Constitution. In addition, the Federalist Papers are still instructive when it comes to the Supreme Court's question as to how to assess some issues correctly. Without a good Explanatory Memorandum, it is difficult for judges to apply a so-called 'teleological' approach. That is: to examine what the original legislator may have meant with certain rules.

Thursday: on this day, the Members will decide how to present the draft Federal Constitution for Europe to the citizens of Europe, explaining the goal and request to ratifying it.

Friday: on the last day, we welcome representatives of political bodies, either from the EU or from Member States. Pro-European institutions, representatives of civil society, knowledge institutes and the media are also welcome. With a few keynote speakers and a panel discussion, they will be informed of the outcome of the Convention. The Convention will end on Friday.

This 'marching order' makes it clear that it is not a conference with speakers who enjoy talking and an audience that is bored, but a Convention in which each participant is working hard and collaborating to achieve a successful outcome. No speeches, no declarations, no representation of national interests. We have seen and heard enough of this over the past seventy years: all vanities. The Citizens' Convention is about finalizing the text of the concept of a Federal Constitution, its Explanatory Memorandum, and the way in which the citizens of Europe are served.

7.3.8 What should be the venue for the Convention?
We prefer to hold the Convention in The Hague. With its Peace Palace and various International Courts and Tribunals, it is the world's legal capital. Moreover, until the 1990s, the Netherlands often participated in thinking about and cooperating in the federalization of Europe. Even though federalism is no rewarding discussion topic in the Netherlands at the moment, the seed is still in the ground and will germinate, just as the seed in the deserts will blossom as soon as a heavy rainfall passes over it.

7.3.9 How to gain support for the Federal Constitution among the citizens of Europe?
Two concepts are important here: 'federating the federalists' and 'educating the people'.

The first – 'federating the federalists' – concerns the following. One of the reasons why any attempt at federalizing Europe continue to fail is the extremely low level of cooperative organization of federalist movements in Europe. There are dozens, especially if one also considers the pro-European movements, which do not all explicitly have federalism as an objective. The strange thing about this situation is that these federalist movements are 'single, decentralized, unitary movements'. They stand on their own (single), have (almost all) local, regional, and national departments (decentralized) and form a unitary status within themselves. However, there was no federation of federal movements until we in June 2020 created the federation of the Federal Alliance of European Federalists. It is an umbrella

organization under which heterogeneous federal movements find a common federal home. These are movements that take federalism to heart, albeit in very different ways. This should be the start of a new phase of European federalism: the creation of federations comprising federal movements at a local/regional, national, and European level.

The need to work hard on 'federating the federalists' is threefold. Firstly, if a federal movement, is unable and unwilling to join the federation FAEF, how can it ever contribute to creating a federal Europe? Secondly, it is only by systematically working on improving the degree of organization that we can build up authority and exercise power. Thirdly, in this way, we can – and must – make it clear to the people of Europe what federalism is and why it is far better for their prosperity and security than the intergovernmental EU operating system, which has in any case reached the end of its political life cycle. Under the adage 'All sovereignty rests with the People', the citizens of Europe are the alpha and omega of a federal Europe.

The federalists will therefore have to 'take to the streets.' Both literally, with demonstrations, but also figuratively, by informing and teaching the citizens of Europe in all kinds of ways about the usefulness and necessity of European federalism. The political leaders of the European Union have not been able or willing to do this since the arrival of the intergovernmental governments in 1951.

'Federating the federalists' is necessary for 'educating the people'. Public support is needed to convince the people of Europe to ratify the draft Federal Constitution. This requires the transfer of knowledge, insight and, above all, feeling. The people cannot buy it in a supermarket. It is up to the federalists to hand it over. That is not simple, but necessary. The 'course material' no longer needs to be made. The Toolkit has all the material needed for this.

7.3.10 Who is eligible to vote for ratification and how do the Citizens of Europe vote on the draft Federal Constitution?

Eligible to vote is everybody who has the right to vote in his own Member State.

The answer to the question as to how to vote is with a voting system based on blockchain technology. Blockchain technology is currently being experimented all over the world. The most common application being crypto-currencies such as BitCoin. There have already been experiments with organizing the process of voting through a blockchain system.

We are currently designing our own system, which can be applied throughout Europe. Please note that the ratification of the draft Federal Constitution is neither

a Referendum nor a European Citizens' Initiative. These are procedures with too many constraints and pitfalls. We do not need to ask any authority for permission to give the Citizens of Europe the opportunity to express an opinion on the draft Federal Constitution. It is just a question of organizing. Again: not simple, but it is possible.

7.3.11 Who leads the Convention?

The President of the FAEF is the chairman of the Citizens' Convention that meets for a week in The Hague to improve our draft Federal Constitution and to pave the way for its ratification. The President is assisted by the members of the FAEF Board. They each perform a task for the orderly conduct of the Convention.

The President does not have the right to vote, except in the event of a tie in the Convention. In this case, the President decides.

The President and the Board act as hosts for the reception of guests on the last day of the Convention.

7.3.12 How will the geopolitical world react?

If the FAEF succeeds in instituting this Citizens' Convention and the people of Europe ratify the federal constitution, the geopolitical world will no doubt react. The question is, however, whether it will be an entirely positive reaction. A federal Europe will rival America and China in economic strength. Europe will probably finally take responsibility by playing a meaningful role in solving the decades-long conflicts in the Middle East, especially between Israel and Palestine. A European defence force within NATO will significantly increase military strength, leaving Russia no choice but to stop imitating Hitler's Sudeten-Germany manoeuvre. The future will provide the answers to these questions.

7.4 Timeline of the activities prior to the Convention

7.4.1 Timeline

As soon as sufficient funds are available, the organization of the Convention can begin. The whole process will take about one year. In phases like:

- Selection of the fifty-four participants: two months.
- Study and production by the participants: five months, including working on support and commitment.
- Convention duration: one week.
- Strengthening public support of Citizens by informing, teaching, and explaining the draft Constitution, including ratification: five months.

The design and testing of a voting system – based on blockchain technology – for ratification will take place within that year. This is an estimate of the required turnaround time. If it has to take longer, then we take more time: quality is the only thing that counts.

7.4.2 The selection of the members of the Convention

A group of circa ten federalists meets for two days to analyze the men and women who meet the requirements of the three knowledge complexes; drawing up a list of potential members.

(a) This analysis leads to a shortlist of potential candidates. From this list, fifty-four people are selected, who are then all approached personally. A person-centered approach is a necessary condition for creating support among the potential members themselves. The result of this approach is a list of people who are willing and able to act as members of the Convention.

(b) Keeping others on standby. All potential members who are not finally included in the list of fifty-four participants are invited to be available to support the teams of members participating in the Convention.

(c) Determining the date of the Convention. Only when it is clear which fifty-four people will be the members of the Convention, we set the date at which the Convention is to take place. Personal interviews with potential members will include a discussion of their views on the preparation of the five-month period prior to the Convention. If they think it can be done within fewer months or that, conversely, more time will be needed, then the timing of the Convention will be adapted accordingly. This also extends to the actual venue alternatives in The Hague.

7.5 Members' work prior to the Convention

7.5.1 Studies to be carried out

Members, but also those who, as non-members, participate by supporting the de facto members, are required to study this Toolkit and all available documents and videos. The working methods of the members of the Convention are also supported by a Protocol which they are expected to sign. See later.

7.5.2 Consultation with Supporters and Citizens

During the five months preceding the Convention, all members will be able to consult with people who are prepared to support them. The supporters are therefore people featuring on the shortlist but who were not selected as members. The actual members shall be free to consult with them in any way and to use their

expertise. For the record, any member of the Convention is free to cooperate with members of other countries.

The same applies to the involvement of the Citizens of Europe in these reflections taking place in this phase. If the Convention-members find it useful and necessary to have conversations with Citizens themselves regarding the work they have to do, they are free to do so. They can organize mini-conventions and so-called 'living room conversations'. Or they can give lectures and write publications. They can also work in their own environment on the aforementioned aspect of 'federating the federalists', by setting up local or regional federations of federal movements and involving their members in approaching the Citizens. All this falls within the scope of gaining support and commitment.

The Members receive adequate funds to organize their own Citizens' support.

7.5.3 Putting forward any improvements to the draft Constitution, the Explanatory Memorandum, and the way of approaching the people of Europe

The studies to be undertaken by the members prior to the Convention, plus their consultation with Supporters and Citizens, should result in proposals for improvements to be made to the draft Federal Constitution, the Explanatory Memorandum, and the way of approaching the European people. These proposals must reach the FAEF's organizing committee two months prior to the start of the actual Convention in The Hague. This harvest will be processed in new documents within a month, which will then be immediately available to the Convention members. On this basis, they will be able to prepare for the decision-making within the one-week Convention.

7.6 Members' work during the Convention

When the Convention finally takes place, most of the work will have been done. The most important decisions will have already been made. It is only a matter of concluding the preparatory work with any clear decisions. Of course, there is always the possibility of amending the final versions during the Convention. Unlike in the European Council, which works with the reprehensible system of unanimity, decisions are to be taken by majority: half plus one. In case of a tie the Convention's chairperson decides. The course of the Convention will be recorded. In addition to the use of social media – the discussions can be followed via a live connection. This all depends of course on the availability of sufficient funds.

7.7 Members' work following the Convention

Soon after the Convention, the overall result will be incorporated into a comprehensive document. The general findings will be communicated on the Friday when guests from the political and social world will be invited. This is

followed by a relatively uncertain period of about five months: the draft Federal Constitution and its Explanatory Memorandum must be brought to the attention of the people of Europe. This is partly a matter of providing information and partly a continuation of the educational trajectory in order to strengthen support. We expect the same process to emerge as the authors of the Federalist Papers had to deal with in 1787 and 1788: comments on the production of the Convention will come from all angles. Members of the Convention are expected to explain clearly and unambiguously the quality of their own thinking. The text must be available in all the languages of the current European Union.

7.8 Are we overly optimistic about the success of ratification?

Let us quote Victor Hugo (1802-1885): "Nothing is stronger than an idea whose time has come." The time is ripe for replacing the intergovernmental European Union by the federal United States of Europe.

We must draw consequences from the adage: 'All sovereignty rests with the people'. If one takes this view, one has to accept that this adage goes hand in hand with another one, which is: 'All wisdom rests with the people'. If one is not convinced that the people have the monopoly of wisdom, then one should not designate them as the owners of sovereignty. That is incongruent. One cannot claim that the people have sovereignty while, at the same time, holds the opinion that they lack the wisdom to take the right decisions at crucial moments.

The proposition that wisdom rests with the people does, of course, make them vulnerable. Contemporary Pied Pipers of Hamelin are always trying to mislead the people. Unfortunately, that is a fact of life. Nevertheless, this has never prevented Switzerland from constitutionally establishing the wisdom of the people as the decisive criterion in its cantonal system.

7.9 What will happen after the ratification?

There are three possible outcomes:

1. In less than nine Member States of the European Union, the people vote in favour of the ratification of the Federal Constitution. In that case, everything stops: 'game over'.

2. In at least nine or more member states a majority votes in favour of ratification. That result is submitted to the parliaments of those states. If they respect the will of the people, they establish a form of enhanced cooperation based on Article 20 of the Lisbon Treaty as a federation of those states. The Member

States concerned leave their individual place in the European Union but join the EU as a federation. Thus, alongside the other Member States in which no majority voted for the constitution. In case parliaments do not follow the Citizens' ratification of the draft federal Constitution they have to deal with that themselves.

3. In all 27 Member States of the EU, a majority votes in favour of ratification. In this case, too, the parliaments of the Member States decide whether they respect the will of the people. If so, the process of dismantling the European Union and building the United States of Europe begins.

The inauguration of the United States of Europe in 2035 will be celebrated with the unveiling of a statue of the Greece Princess Europa, bearing the Latin inscription:

Annuntiamus cum magno gaudio: habemus foederationem Europae
(It is with great pleasure that we announce: we have a federal Europe)

If we succeed, we will experience a peaceful version of the Magna Carta of 1215, of the Placcard of Abandonment of 1581 and the Declaration of Independence of 1776. These documents made it clear that governments derive their power from the people and that the people have an inalienable right to abolish a destructive government and to replace it with a superior one. It is possible to make different judgements as to whether the European Union's intergovernmental operating system is destructive and merely a sum of national interests, with the members of the European Council not taking ownership of common European interests. But with this Toolkit we think we have demonstrated that this is in fact the case. This conclusion lays the foundations for a difficult lesson for politicians who are unaware of or ignore the foundations of the political office, the most important office in the world. See Chapter 11.

7.10 In what respect does this approach differ from the Convention of Philadelphia?

We have motivated the choice of holding a proper Convention along the lines of the one held in Philadelphia by considering Philadelphia as the best practice. None of the fruitless attempts in Europe since 1800 resemble the process and the organization of this successful Convention.

In some respects, however, our proposal for the Citizens' Convention for a Federal Europe is different. First of all, the European Federalist Papers – written in 2012-2013 by Leo Klinkers and Herbert Tombeur - already exist. In America, they came into being only after the Convention had designed the federal constitution.

Secondly, the selection of the members of the Citizens' Convention is done by grass root federalists. In America, the participants were appointed by the Confederate Congress and they came from the representative bodies of the thirteen states. Thus, each one had some sort of a political status, even though such a status was hardly developed at the time. Given the proven inability of European politicians to federalize properly, they are not welcome in our Convention unless they have specific knowledge of one of the three profiles as outlined earlier.

Thirdly, the Convention will not be concerned with drafting a federal Constitution from scratch, but with improving the existing draft. On the understanding that any improvements will always be confined to the current number of ten articles.

7.11 What do we do in case of disagreement between the Citizens' Convention and FAEF?

It is possible that the Citizens' Convention may propose adjustments to our draft federal constitution that we cannot accept. Then what? In that case, we do the same thing that the Convention of Philadelphia did to solve such a problem. What was the case?

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.

As said before 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'état' 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.

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.

7.12 Convention Protocol

The fifty-four members of the Citizens' Convention must sign this Protocol.

> I, (name Member of the Citizens' Convention)
>
> Convinced that the time is right to establish a democratic United States of Europe, based on a Federal Constitution that guarantees freedom, order, safety, happiness, justice, defense against enemies, foreign and domestic, sustainability of the environment as well as acceptance and tolerance of the diversity of cultures, convictions, ways of life and languages of all European Citizens,
>
> Participating as Member of the European Citizens' Convention on [date], in The Hague, Netherlands, in order to decide upon a draft Federal Constitution for the United States of Europe,
>
> Having read and studied thoroughly the Constitutional and Institutional Toolkit for Establishing the United States of Europe and related material,
>
> Agreeing that the European Citizens' Convention is not meant to debate and discuss on whatever federalist issue but is meant explicitly to decide upon a draft Federal Constitution, to be distributed to the peoples of Europe for ratification by those peoples, which implies that my participating is focused on decision-making.
>
> Shall contribute to the debating and the decision making along the following Convention rules:
>
> 1. Upon receiving the Convention Documents, I shall do my utmost best
>   (a) to disseminate these documents among the people of my country,
>   (b) to gather reactions on the draft Federal Constitution, and
>   (c) to send before [date] to the Convention's email address toolkit@faef.eu proposals to amend the draft Constitution - meaning improvements of the content of the ten articles of the draft Constitution - aggregated by myself, supported by involved Citizens.

(d) to collaborate on proposals to improve the draft federal constitution so that in the final week of the Convention's work, decisions can be taken on the ten articles of the draft by majority vote.

2. I agree that the Chairperson of the Convention opens and closes all its sessions he or she organizes. I agree that the Chairperson gives the floor to the Members as long as he or she finds it appropriate.

3. I agree that each Member has the right to discuss proposals which has been processed according to rule 1 of this Protocol, provided that this will be confined to (a) elaborating on the grounds pro or contra the proposed amendments of the draft Constitution, (b) bearing in mind that the proposed amendments aim explicitly at improving the content of the ten articles of the draft Constitution without increasing the number of the articles of the draft Constitution, and (c) using only the time span allowed by the Chairperson.

4. I agree that the overall decision making process should be accomplished within two days.

5. I agree that decisions on proposals to improve the content of the ten articles of the draft Constitution will be taken by majority rule, whereby each Member has one vote. Majority is 51% or more of the number of the casted votes, abstentions included. In case of a tie the Chairperson decides.

6. I agree that the Convention's Secretariat aggregates the proposed text improvements in a way that facilitates the debate and decision making at best, by disseminating all those proposals to all Members of the Convention before [date].

7. I agree that proposals for improving the content of the ten articles of the draft Constitution, which do not reach a concluding decision, will be kept open and transparent to the European Citizens who are willing to be involved in finalizing the decision making on the federal Constitution.

[Name and Signature]

7.13 The federal constitutional essence by Carl Joachim Friedrich

Jean Marsia[115] quotes in an article 'L'actualité est décevante, mais les valeurs sûres sont pérennes!'[116] the German political scientist Carl J.

[115] Jean Marsia, President of the European Society for Defence INPA, 'L'actualité est décevante, mais les valeurs sûres sont pérennes', AGEFI, Luxembourg March 2021. Marsia is author of 'A federal constitution for the United States of Europe. Why and How?'

[116] 'The actuality is disappointing, but the sure values are perennial'.

Friedrich (1901-1984) from a lecture by Friedrich, held in Rome on 22 October 1955.[117]

> "Friedrich began by lamenting that 'the movement for European unification has stalled', that 'many are now satisfied with a weak 'integration', with a vague integration without a political character'. He denounced the fact that 'the skepticism and weakness of will and of determination of many Europeans prevailed after the war over the adventurous and courageous spirits of those who wanted to push the federal organisation of Europe in the direction of a federal constitution'.
>
> 
>
> He added: 'As a long-time specialist in constitutional structures and processes, I am convinced that Europe cannot have a healthy life without a solid and clear constitutional structure, a constitution freely adopted by the European people, through a referendum on a proposal prepared by a representative constituent assembly, freely elected by the people. (...) It is impossible to establish a modern political order in democratic terms if there is no constitutional basis. A constitution is always the result of the action of a constituent power which seeks to organise a political community, which guarantees freedom to individuals, to groups such as trade unions, and to the people as a whole.'
>
> Friedrich then outlined 'the tasks for those who really want to work for the unification of Europe (...): a plan must be prepared, a constitution drawn up, a political force organised, a campaign conducted.' He regretted that no plan has ever been drawn up setting out what must be done. 'There is no Manifesto for Europe which, in simple terms, but very precisely and after in-depth analysis, sets out the past, the present chaos and the future plan of a European government and (that) can be consulted by anyone who wants to know what we intend to achieve. (...) Perhaps, therefore, the most urgent duty is to forge this weapon for the battle of ideas for the education of our European contemporaries. (Then it will be necessary) to draw up the outlines of a constitution.'"

Carl Friedrich helped Konrad Adenauer conceive the federal German constitution. He then supported Paul-Henri Spaak in his efforts to establish a European political community.

Anyone who is convinced of the fundamental correctness of Friedrich's position that (a) the future of Europe must be secured in the form of a federal State.

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[117] Carl J. Friedrich, 'Vers le pouvoir constituant du peuple européen', in ; Mario Albertini, *Qu'est-ce que le fédéralisme?*, Paris, Société européenne d'études et d'information, 1963, p. 211-220.

and (b) that it must be based on a democratic federal constitution cannot but reject the treaty-based intergovernmental EU system, created by a serious error of knowledge by Robert Schuman in May 1950, in favour of the creation of the United States of Europe. That is why the constitutionalism of the Federal Alliance of European Federalists (FAEF) fits seamlessly with the insights of Carl J. Friedrich.

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PART C: SUPPORTING MATERIAL

8. THE PROCESS OF AMENDING THE US FEDERAL CONSTITUTION[118]

8.1 Introduction

A Constitution is a restful possession. For whom? For the people. It is of, by and for the people. A Constitution is the foundation of a reliable and credible way in which the people entrust some of their powers to governments and of an equally reliable and credible way in which those governments are accountable for the use of those powers.

One feature of restful ownership is that one does not constantly tinker with a Constitution. But everything of value needs maintenance. Even a Constitution must adapt to new circumstances. This happens through a process of amending the Constitution. This requires solid guarantees to prevent the Constitution from becoming a plaything of constantly changing political insights.

This chapter describes that process in the United States. It contains interesting aspects for the Citizens' Convention, both in terms of process and content.

8.2 Brief history

With the Declaration of Independence of 4 July 1776, the thirteen colonies of England in North America declared they were no longer subject to the English King. They formed a Confederation on the basis of a treaty, the 'Articles of Confederation'.

Each former colony began to develop its own system of government. But as a typical characteristic of a confederate form of government, the Confederate Congress possessed little unifying power. It also lacked financial resources, while the struggle for independence was still going on.

Due to the lack of unity, tensions arose between the thirteen developing states. These grew so high that three groups were formed: Northern, Southern and a group in the middle. Before they turned against each other, James Madison was given the green light by George Washington to convene a group of wise men to consider the situation. The thirteen states sent five and fifty people. That became the famous Philadelphia Convention that met from May to September 1787. The picture shows the moment when Washington is about to sign the Federal Constitution.

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[118] Sources: National Constitution Center (NCC); Cornell Law School, Legal Information Institute (LII); National Conference of State Legislatures (NCSL), Amending the US Constitution; National Archives, Constitutional Amendment Process.

Their assignment was - by act of Congress - to improve the Treaty the 'Articles of Confederation'. They disregarded this task because they realised that this very Treaty was the main cause of their failure to create unity while preserving the sovereignty of each state.

They rejected the dysfunctional Confederal Treaty and designed the world's famous first federal constitution. They then offered it for ratification to the people of the thirteen states. In 1789, the ratification process was completed, and the USA entered into force.

The federal Constitution consists of seven articles. Over the years it has been amended by twenty-seven Amendments. The amendment process and the amendments themselves follow below. It is useful material for the Citizens' Convention to improve and establish our draft federal Constitution for the United States of Europe.

The Philadelphia Convention realised that the thirteen states could not continue to exist without the construction of a government that could look after common interests. If each of the thirteen states were to retreat into its own national territory, with closed borders and glorification of its own cultural identity, they would be played off against each other by this nation-state anarchy and lose their desired unity. On the other hand, they were afraid of the possibility that such a common government might start to oppress them again - like the English King. Therefore, the federal Constitution and its twenty-seven amendments have one all-encompassing feature: protection of Citizens against a dominating government.

This constitutional system is unique because it is based on foundations of political philosophy, standards of constitutional lawmaking and the invention of standards of federal statecraft.

8.3 Amending the US Federal Constitution

The basic procedure for amending the US Federal Constitution is found in Article V of the US Constitution, which reads:

> "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred

and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. "

The amending process proceeds through the following steps:

1) Congress accepts the proposed amendment by a two-thirds vote in the House of Representatives and in the Senate. The President has no function in this process.

2) The amendment must be ratified by the State legislatures. This requires a three-fourths majority: 38 out of 50 states. State legislatures may not change the text of the amendment. The Governor's signature is not required. Congress can stipulate that ratification must take place within a certain time.

3) After ratification by at least 38 states, the amendment is published in the Federal Register.

4) As a variant, ratification can take place through Conventions rather than through the Legislatures of the States. States can ask Congress to organise a constitutional convention. This requires the consent of two-thirds of the states.

5) The amendments ratified by States or Conventions are part of the constitution: Amendments to the Constitution. They are reflected in the original text of the Constitution followed by the amendments. Some articles of the Constitution have been amended or provided with new, additional text as a result.

6) States sometimes propose amendments to Congress. Congress is not constitutionally bound to honour such calls.

7) Since the entry into force of the Federal Constitution, 33 amendments have been tabled. Only the 27 mentioned below were finally ratified by the required number of two-thirds of the States (38 out of 50).

8.4 The 27 Amendments to the US federal Constitution

Amendment 1: Freedom of Religion, Speech, Press, Assembly, and Petition

Passed by Congress September 25, 1789. Ratified by the States December 15, 1791. The first ten amendments form the Bill of Rights[119].

[119] FAEF's draft federal constitution for the United States of Europe (see Chapter 7) does not contain this Bill of Rights. Reason: our draft federal constitution for the USE accepts the European Convention on Human Rights and Political Freedoms (EU) and the Charter of Human Rights

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceable to assemble, and to petition the Government for a redress of grievances."

Annotations
The First Amendment guarantees four freedoms: freedom of religion, freedom of opinion, freedom of assembly and freedom to petition the government.

On freedom of religion:
- No compulsory national church or religion.
- No compulsion to attend churches.
- No coercion to pay by citizens to churches.
- Many court cases on interpretation of this amendment.

On freedom of speech and press
- The government may not impose prison sentences or fines or hold civil persons or organisations accountable on the basis of what they say or write, except in exceptional circumstances.
- The protection applies not only against possible coercion by Congress, but also by all government agencies, federal, at the 50-state level, local, legislative, executive, and judicial.
- This amendment is essentially a protection against censorship on the part of governments that can threaten freedom of speech.
- The Supreme Court interprets this amendment broadly. It covers not only talking, writing, publishing, but also radio and TV, use of the Internet and other forms of expression.
- Laws that forbid people to criticize, for example, wars, opposition to abortion or high taxes are seen by the Supreme Court as contrary to the constitution because they prevent public debates, also contrary to the principle of self-government that lies at the basis of the constitution. It is not for governments to determine what people should think or listen to.
- The Supreme Court does condemn false accusations against persons, threats, insults, obscene statements, child pornography, misleading advertisements.
- The Supreme Court also condemns speech if the person concerned has a special relationship with governments. For example, if a civil servant makes a speech that is not in accordance with his status as a civil servant.

(Council of Europe) as the legal basis for the protection of European human rights and political freedoms and is thus the European Bill of Rights.

On assembly and petition

- These are two separate rights: assembly and petition.
- The Supreme Court considers both rights to be extensions of the right of speech, which is why they are also called freedom of expression.
- The right to assemble is the only right in the Bill of Rights that involves more than one person. For that reason, the preparation of 'assemble' also falls under this right. Thus, this right is also known as 'the right of association' although it is not in the First Amendment.
- The right to assembly provides crucial legal and cultural protection for groups with dissenting or unorthodox views. In the words of Justice Robert Jackson of the Supreme Court, it is 'the right to differ'.
- The right to petition dates back to the Magna Carta (1215) when subordinates of the English King John Lackland petitioned him, accusing him of despotism and forcing him to sign a declaration promising proper behaviour in the future.
- Another important example is the Declaration of Independence of 1776 by which the thirteen colonies seceded from England, formed a Confederation in 1776, drafted a federal constitution in 1787 and became the basis of the USA from 1789 onwards.
- Today, the Supreme Court sees this right as part of the right to freedom of speech.
- There are some risks in exercising the right to petition. Members of Congress can activate voters to exercise that right in order to cash in on political interests or to win over voters. Another risk is that a petition could contain instructions to members of Congress. But the Bill of Rights does not know a 'right of instruction'.
- Currently, the right to petition in Congress and all fifty states is interpreted as a formality. In the sense that it does not (any longer) lead to fundamental debates because it is interpreted as a demand of the freedom of speech.

Amendment 2: Right to Bear Arms

The second amendment within the Bill of Rights.

"A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Annotations

- The modern debate is about whether this right gives individuals the right to bear arms or whether this right exists only for militia organisations (organised groups of ordinary citizens with their own weapons, without military training and without payment). This question did not exist when the Bill of Rights was drafted because George Washington commanded an army composed mainly of mercenaries and militias.

- The Philadelphia Convention considered that the national defence could not rely on militias and decided that the federal body should have the power to raise a standing army, thus giving the militias a role on the sidelines.
- This meant that the thirteen states could no longer have their own militias. This led to major protests against the draft federal constitution on the grounds of federal usurpation of the states. The federalists replied that the people were armed anyway, which would make it almost impossible to subjugate them by military force.
- The draft federal constitution gave the federal government almost total authority over a standing army and the militia, but not the authority to disarm the citizens. The Convention failed to reach agreement on whether an armed group of citizens could actually protect themselves from federal oppression.
- Over the years, traditional militias disappeared. State militias were incorporated into federal military structures such as the National Guard.
- Supreme Court case law is based on the interpretation that the Second Amendment is a private right of individuals to protect themselves and not a right of states to maintain militias.
- Nevertheless, there is a movement that interprets this amendment as meaning the right to have militias of armed citizens.
- For the record, our draft federal constitution for the United States of Europe does not include the right to bear arms, nor the death penalty.

Amendment 3: Quartering of Soldiers

The third amendment within the Bill of Rights.

"No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law."

Annotations

- This right seems to have lost its constitutional meaning. The federal government is unlikely to ask citizens to take soldiers into their homes. Not even in times of war.
- This amendment has its origins in opposition to the English pre-independence laws of 1776 that required citizens to quarter soldiers. And the duty to provide the troops with firewood, beer, and beds.
- This led to violence in Boston where four thousand English soldiers were billeted out of a population of fifteen thousand. On 5 March 1770, British soldiers fired on an angry mob, resulting in what the colonists called the 'Boston Massacre'.
- Tensions grew. In December 1773, a rebellious mob threw a valuable cargo of tea into the water in Boston harbour, later called the ‘Tea Party’. Subsequent strangleholds by England finally led to the Declaration of Independence in July 1776.

- Despite the fact that quartering of soldiers no longer exists, this amendment has modern implications. It suggests the individual right to domestic privacy; protection against government intrusion into one's home.
- It is also the only article that establishes a direct relationship between civilian and military rights during both war and peace; rights that underline the importance of civilian authority over the armed forces.

Amendment 4: Search and Seizure

The fourth amendment within the Bill of Rights.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Annotations

- This right limit the powers of the police to arrest and search someone, as well as their property and home.
- It has come under considerable pressure in recent years because police and security services are often guilty of controversial activities. This is especially true in the area of collecting bulk information through telephone and Internet communications between citizens, initiated by the 'War on Terror'. This legislation has led to regular aggressive police actions with the use of 'stop and frisk', and the unlawful shooting of (often coloured) unarmed civilians. Aerial surveillance - whether using planes, helicopters, or drones - can also be a violation of this right.
- The fact that the police need a specific - and therefore not a general - Warrant to act when there is a suspicion of criminal behaviour implies that first a judge must decide whether that Warrant should be granted and that the judge will only grant it if the government official demonstrates probable cause.
- In practice, this appears to be applied less strictly than the text of this amendment suggests. The police can stop cars and people on the street without a Warrant and also investigate or arrest if the need arises.
- The Fourth Amendment is mainly used in criminal cases. For example, if the police have seized evidence in the course of an illegal investigation. That evidence may then play no role in the criminal case. That is called the 'exclusionary rule'. Protests that this sometimes allows criminals to escape punishment were once answered by a judge of the Supreme Court, Louis Brandeis, with: "If the government becomes the lawbreaker, it breeds contempt for the law."
- In modern times, the application of this amendment by Citizens is difficult. How can you protect yourself against cameras that are everywhere or against drones that fly overhead and register everything? Or from phone tapping and hacking

- by security services - of your internet? This question also plays a role in cases where there is no suspicion, but where some form of search takes place anyway. For example, at airports, where you are forced to take off your shoes, show your luggage and walk through a gate that checks the inside of the body.
- This leads to the conclusion that this right, which dates back to 1791, is still relevant today - in the light of the advanced technology of our modern age - and continues to raise questions about the limits of government intervention in the private lives of citizens. For example, now that companies are scanning billions of faces on the basis of public sources and will offer these to security services in return for payment in order to realise lightning-fast facial recognition.

Amendment 5: Grand Jury, Double Jeopardy, Self-incrimination, Due Process, Takings

The fifth amendment within the Bill of Rights.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Annotations on the grand jury clause

- Crimes that fall under the jurisdiction of the federal government must be indicted by a Grand Jury, a panel of Citizens.
- About half of the States have Grand Juries for crimes that fall within the States' criminal justice system although formal indictments can be made in other ways.
- The system of working with a Grand Jury dates back to the Magna Carta (1215) by which the English King John Lackland was called to order by his subjects for despotic behaviour. The origin lies in the consideration that a Grand Jury does not unilaterally represent the so-called sword power of the government but also acts as a protective shield against oppression and arbitrariness.

Annotations on the double jeopardy clause

- This rule stems from Roman law: *ne bis in idem*. It prohibits the government from charging someone twice for the same offence.
- In practice, however, it raises questions. For example, if after the indictment but before the verdict of the judge, the case is closed because of a mistrial. In such a case, it happens that the defendant is charged again.
- The use of the so-called 'dual sovereignty doctrine' can also lead to being charged twice with the same crime. This happens when both the Federal and

State authorities have the power to charge a suspect. This was the case, for example, in the Rodney King case in Los Angeles. Officers who had seriously assaulted King (on 3 March 1991) were acquitted at the State level but subsequently charged and convicted again at the Federal level.

Annotations on the self-incrimination clause

- This rule gives defendants the right not to be forced to incriminate themselves. He/she does not have to be a witness against himself.
- This is known as the Fifth Amendment Privilege or 'the right to take the Fifth'. Silence is not seen as contempt of court and therefore not punished.
- In practice, this right is also applied outside criminal law as a rule that no one can be forced into self-incrimination.

Annotations on the due process clause

- This rule also dates from the Magna Carta: "No free man shall be arrested or imprisoned ... except by lawful judgement of his peers or by the law of the land."
- The main principle of this law is that the government must act on the basis of the rule of law: no one is above the law. Not even the government. The methods of applying criminal law must be fair and legal.
- In short, this rule requires that the assessment and possible conviction of a person suspected of a crime must be based on due process.
- Amendment 14 also has a 'due process' clause. But this is about setting limits to criminal trials conducted at the level of the states. The Due Process Clause of the Fifth Amendment concerns trials at the federal level.

Annotations on the takings clause

- This rule prohibits governments from taking property from private citizens to use for matters of public interest. Public interest items must be paid for by the people as such. Thus, by means of tax revenues.
- If the government finds itself forced to use private property for matters of public interest, just compensation must be offered. This duty of compensation applies all the more in cases where a citizen's property is confiscated or given to someone else.
- It applies not only to land and cattle, but any form of private property, including lost interest.

Amendment 6: Right to Speedy Trial by Jury, Witnesses, Counsel

The sixth amendment within the Bill of Rights.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the

nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the Assistance of Counsel for his defence."

Annotations

- This amendment sets out a number of rights to ensure accurate, fair and legitimate criminal proceedings. Over the years, it has led to the professionalization of the law of criminal procedure.
- It has also led to a decrease in the use of juries. In order to avoid a lengthy trial and a possible high penalty, many defendants choose to plead guilty.
- The rights referred to here, apply in both federal and state criminal cases. Since most criminal cases take place at the state level, this amendment has a wide scope.
- This amendment gives defendants without sufficient financial resources to hire a lawyer themselves the right to be defended by a state-paid public defender. A defendant may also act as a defender in his own case.
- Because a defendant has a right to a speedy approach to his case, it happens that the Supreme Court rules that if the case does not start in time, the whole criminal case is dropped. Nevertheless, it can sometimes take several years before a trial actually begins.
- Criminal cases must take place in public unless there are reasons to keep the public and press out of the room; for example, in matters of national security, protection of the public or serious privacy interests of the accused.
- The Compulsory Process Clause in the text of the amendment gives the defendant the right to compel witnesses by subpoena to come and testify in court.
- The Confrontation Clause in the Amendment requires that prosecution witnesses be heard under oath and may be cross-examined.
- The words 'impartial jury' mean that a defendant has the right to a jury if the case involves more than six months of punishment.

Amendment 7: Jury Trial in Civil Lawsuits

The seventh amendment within the Bill of Rights.

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

Annotations

- Juries decide less than one percent of civil law cases. The reason is that jury trial in civil cases takes place only at the level of federal courts. Not at the level of the 50 states. That makes this an unusual amendment because almost all rights

within the Bill of Rights apply not only at the federal but also at the state level. Nevertheless, some states have included the right to juries in some civil lawsuits in their own constitutions.
- The USA is virtually the only country that has jury trials in civil cases. Europe does not have this tradition. Nor is it found in Latin America, Asia, Canada, Australia, or New Zealand. The fact that it does exist in the USA has to do with the English tradition.
- The amendment has two clauses. The first, the Preservation Clause, determines the financial value of a jury trial. The case must be worth more than twenty dollars. The second clause, the Reexamination Clause, provides that federal judges do not have the right to overturn jury verdicts.

Amendment 8: Excessive Fines, Cruel and Unusual Punishment

The eighth amendment within the Bill of Rights.

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Annotations

- The drafters of the Bill of Rights included this amendment for fear of excessive power from the federal government, which would have much more say in the matter than was the case during the confederal status of the thirteen former colonies.
- This amendment prohibits the federal government from imposing unduly harsh sentences and from charging too high a price for the right to remain temporarily at liberty before trial.
- However, the meaning of the Cruel and Unusual Punishment Clause is unclear. What is cruel and what is unusual? It is only agreed that it is meant to counteract barbaric punishment by a despotic government.

Amendment 9: Non-Enumerated Rights Retained by People

The ninth amendment within the Bill of Rights.

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Annotations

- This amendment has a curious background. During the Philadelphia Convention's deliberations on the drafting of the federal constitution, anti-federalists protested on the grounds that the constitution lacked a Bill of Rights. Federalists countered that the inclusion of a list of rights in a Bill of Rights would imply that other rights, not included in the list, would then have no meaning, so that the drafters of the Constitution could be accused of giving the federal

government the right to limit or nullify unlisted rights. Because the anti-federalists persisted, James Madison, leader of the federalist approach, promised to draft a Bill of Rights after ratification of the federal constitution.
- In a famous speech, Madison proposed a series of amendments with the aim of incorporating them into the newly ratified federal constitution as a kind of prefix to that constitution.
- Madison's proposals were handed over to a Select Committee. The Select Committee rewrote some of the proposals and decided not to incorporate them into the federal constitution as a Bill of Rights but to give them the status of an appendix to the constitution.
- During the ratification process of the federal constitution, it appeared that many of the thirteen states made their ratification dependent on the actual arrival of a Bill of Rights.
- There are many interpretations of the meaning of Amendment 9, but there is no prevailing doctrine.

Amendment 10: Rights reserved to States or People

The ninth amendment within the Bill of Rights.

"The powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Annotations

- This amendment establishes that anyone who fears the creation of a supreme state that would once again (as was the case in the colonial relationship with England) lapse into despotism can put that fear to rest because it is explicitly established that the powers of the federal body are limited and limiting.
- This makes this amendment the most important source within the entire constitutional system for interpretations of the standard for federal state formation.

Special note

We, the Federal Alliance of European Federalists (FAEF), regard the text of the Tenth Amendment as the most important in the federal system. It establishes that the Citizens and the States are the owners of all powers and that only a limited and limitative number of their powers are entrusted to a federal body which, with those limited and limitative powers of the Citizens and the States, may and must promote common interests. Interests that citizens and states are not able to represent themselves.

The scientific formula reads: *vertical separation of powers, leading to shared sovereignty of citizens, states and federal body*.

FAEF's draft federal constitution for Europe included this text in Article I, Clause 2, which reads: "The powers not entrusted to the United States of Europe by the Constitution, nor prohibited to the States by this Constitution, are reserved to the Citizens or to the respective States."

The word 'entrusted' is crucial. It implies that the powers of Citizens and States are not transferred but entrusted to the federal body. The word 'transfer' carries the connotation of surrendering sovereignty. Surrendering in the sense of loss of sovereignty on the part of Citizens and States. Under the adage 'All sovereignty rests with the citizens', this cannot be the case. The Citizens retain all powers in all circumstances, but they are not able to exercise those powers every day. That is why they create States and, in this case, a Federal body. They entrust these institutions with a limited number of powers to look after the general interest: the interests of the whole. The powers entrusted to these federal institutions are not lost on the citizens; they are given a dormant existence. During elections or in cases of resistance - justified under provisions of international law - Citizens can activate their dormant powers against despotic governments.

So much for the first ten amendments, bundled in the Bill of Rights, an appendix to the US federal constitution. Following are the Amendments 11 through 27 that have been incorporated into the seven Articles of the US Federal Constitution since 1794.

Amendment 11: Suits Against States

Passed by Congress March 4, 1794. Ratified by the States February 7, 1795.
The Eleventh Amendment added a small sentence to Article III, Section 2 of the original Federal Constitution of 1787-1789. See https://constitutionus.com for the website that lists the seven articles of the federal constitution with the inserted amendments highlighted.

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

Annotations

- This Amendment 11 is the result of a dispute between federalists and anti-federalists during the drafting of the federal Constitution. The basic criticism of anti-federalists was always based on one issue: the fear of supremacy of the federal government. Supremacy in the sense of again (after finally getting rid of the English King) controlling Citizens and States as despots. In this matter, their fear was that the federal government would give Citizens the right to sue States in federal courts.

- When Article III of the now-ratified federal constitution did indeed lead to a citizen's suit against the state of South Carolina in a federal court, the Supreme Court ruled that the federal court had jurisdiction over it.
- But in later years, it became more common for Citizens of one State - or even foreign citizens - to sue a state in federal court. That led to this amendment, which says that federal law may not be used against States by Citizens of another state, nor by foreign Citizens.

Amendment 12: Election of President and Vice-President

Passed by Congress December 9, 1803. Ratified by the States June 15, 1804. The 12the Amendment changed a part of Article II, Section 1. Later a part of the 12th Amendment is changed by Amendment 20. See for the adaptation of Article II, Section 1: https://constitutionus.com.

"The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; -- The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted. -- The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall develop upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. -- The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-third of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."

Special note

Unlike the other amendments, we do not make annotations here. For the following reasons.

This 12th Amendment concerns the election of a President and Vice-President by means of the system of Electors per State and of a subsequently operating Electoral College to confirm the results per State. This electoral system has been under pressure for many years. Particularly in the last few years, some elections showed that the 'popular vote' indicated that person A had won the elections, but that person B had won the election. This happened, for example, to Al Gore versus George W. Bush, and Hilary Clinton versus Donald Trump.

Since 1800, more than 30 attempts have been made to abolish this form of election and introduce the popular vote system. They have not succeeded so far. Now that this system has come under fire again with the election of Joe Biden versus Donald Trump in November 2020, the discussion about the sustainability of this part of the federal constitution has flared up again.

The obsolescence of the American electoral system prompted the first version[120] of the draft federal Constitution for the United States of Europe to opt for a system based on the popular vote, and proportional representation, within one territory, that of the United States of Europe. Another reason to reject the American electoral system is the fact that in practice it leads to a two-party system. Except in the United Kingdom, this is not common in Europe. All Member States of the European Union work with multi-party coalitions. In this way, monopolies of one political party are prevented, unless such a party happens to win the majority in parliament. But because of the adage 'Every monopoly corrupts', this will always end.

Moreover, an electoral system based on the popular vote within the constituency of the United States of Europe avoids a practice known in the USA as 'Gerrymandering': the right of the dominant political party within a state to periodically adjust the boundaries of electoral districts in such a way that the opposing party has little or no chance of winning in a district and the chances of winning for its own party are optimized. Added to the enormous funds allowed in American elections, there is a saying: 'Money is the oxygen of American politics'. In our federal constitution for the United States of Europe, Article III, Section 5 contains some clauses that justify the adage: 'Money should not be the oxygen of European politics'.

Amendment 13: Abolition of Slavery

Passed by Congress January 31, 1865. Ratified by the States December 6, 1865. The 13th Amendment changed a portion of Article IV, Section 2. See for the adaptation of Article II, Section 2: https://constitutionus.com.

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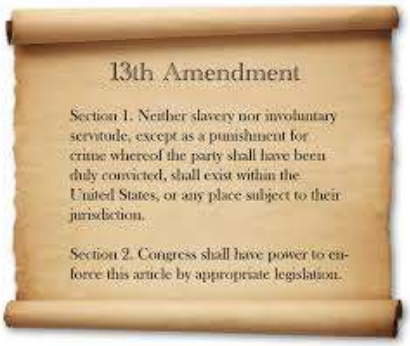
[120] Leo Klinkers en Herbert Tombeur, European Federalist Papers (2012-2013): https://www.faef.eu/the-european-federalist-papers/

"Section 1
Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

"Section 2
Congress shall have power to enforce this article by appropriate legislation."



Annotations

- Despite the words in the Declaration of Independence of 1776 on the equality of every human being, slavery was legal in all thirteen colonies. When the Civil War erupted in 1861, fifteen southern states had four million slaves. By 1860, slaves made up 1/8 of the US population.
- Between Abraham Lincoln's election in the autumn of 1860 and his swearing in on 4 March 1861, eleven southern States unilaterally renounced the federation because they feared Lincoln would immediately abolish slavery. They established the Confederation. Lincoln did not abolish slavery immediately, however, but declared war on the States that had left unilaterally. Not because of their insistence on slavery, but because of their violation of the federal constitution, which did not permit unilateral abolition[121].

- On 1 January 1863, Lincoln issued an Emancipation Declaration. However, this only freed the slaves in the eleven seceding states.
- Slavery was not actually abolished until the 13th Amendment was ratified on 6 December 1865.
- This amendment is unique in two respects. First, because it prohibits any person from owning slaves or imposing any form of involuntary servitude. Most articles of the Constitution aim to limit or neatly regulate the powers of governments. The amendment does not prohibit the imposition of forced labour on prisoners.

Special note

[121] Lincoln justified the decision to declare war on the seceding states with: "Physically speaking, we cannot separate. We cannot 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 cannot do this. They cannot but remain face to face, and intercourse, either amicable or hostile, must continue between them. "

This American federal constitution is unique in the world of constitutions. With only seven articles (and an appendix of ten articles in the Bill of Rights), it is a brilliant example of compliance with the most important requirement of correct constitutional law, namely, to make only generally binding rules and not to fall back on series of exceptions to those generally binding rules in order to provide room for the political folklore of national and nationalistic interests of Member States. The federal Constitution only regulates the horizontal division of powers of the three state powers (legislature, executive, judicial) at federal and state level (the trias politica), the checks and balances to keep these three state powers in place at both levels and the rights and duties of Citizens, States, and the Federal body.

Amendment 14: Citizenships rights, Equal protection, Apportionment, Civil war debt

Passed by Congress June 13, 1866. Ratified by the States July 9, 1868. The 14th Amendment changes a portion of Article I, Section 2. A portion of the 14th Amendment was changed by the 26th Amendment. See for the adaptation of Article I, Section 2: https://constitutionus.com.

"Section 1
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

"Section 2
Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State. ”

"Section 3
No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in

insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability."

"Section 4
The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void."

"Section 5
The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

Annotations on the Privileges or Immunity Clause

- Section 1 of the 14th Amendment is a political reckoning after the Civil War. After the states of the Confederacy lost the war, they began to adjust their legislation to meet the requirements for rejoining the Federation. Although slavery had been abolished, they maintained numerous rules and customs to oppress the black population. When they sent delegates for the House of Representatives and senators for the Senate to Congress, they were denied a seat. In the spring of 1866, a Joint Committee on Reconstruction came up with this 14th Amendment, which was the beginning of the phase of the so-called Reconstruction: a large series of interventions by the federal government to abolish the separation between white and black in numerous areas of social life. However, without success. After 1880, the so-called Jim Crow laws were introduced that imposed again racial segregation at the level of the (mainly former Confederate) states. These laws remained in force until 1965.

Annotations on the Equal Protection Clause

- As an amendment in 1868, soon after the Civil War, it was intended to stop States from discriminating against black people. But the final text is also a mandate for the federal government.

Annotations on the Citizenship Clause

- The federal Constitution has articles that indicate that someone is a Citizen of a State, and other articles that indicate that someone is a Citizen of the Federation. This amendment ensures that everyone born or naturalized in the USA is a Citizen of the State in which they live, as well as the Federal State. The latter is then called national Citizenship.

Annotations on the Due Process Clause

- This section of the 14th Amendment guarantees the following constitutional rights:
  1) Procedural protection.
  2) Individual rights as contained in the Bill of Rights.
  3) Fundamental rights not found anywhere in the Constitution, including the right to marry, the right to use contraception, and the right to abortion.
- This clause is similar to the 5th Amendment but that only protects against the federal government. The 14th Amendment provides protection against the deprivation of life, liberty, property by states without due process.
- The effect of this amendment depends on answers to questions such as: when can one speak of due process? What procedures are required? And what do life, liberty and property mean? The Supreme Court has established that due process requires at least publicity, an opportunity to be heard and an impartial tribunal.
- The Supreme Court has held that some, not all, of the rights in the Bill of Rights are also covered by this amendment and thus protect against unlawful action by states. The other rights only offer protection against the federal government.
- It applies not only to protect black people from discrimination but also white, Hispanic, Asian, and Native American citizens.
- Recently, the Supreme Court ruled that it also applies to discrimination against gay and lesbian citizens.

Annotations on the Enforcement Clause

- Section 5 of this amendment gives Congress the authority to make appropriate rules for the application of Sections 1 through 4. This is to prevent states from making laws that may violate the 14th Amendment.
- While the predominant feature of the federal constitution is protection against a coercive or even despotic federal government, this amendment offers just the opposite protection: the federal government as a watchdog against improper action by states.

Amendment 15: Right to Vote Not Denied by Race

Passed by Congress February 26, 1869. Ratified by the States February 3, 1870.

"Section 1
The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

"Section 2
The Congress shall have the power to enforce this article by appropriate legislation."

Annotations

- The Federal Constitution has no provision for Citizens to have the right to vote. Because the people consider this a most important right, Amendment 15 ensures that this right is enshrined in so many words.
- The reason that the federal Constitution did not establish this right was because the then thirteen confederate states all had their own legislation. With different arrangements for elections. In order not to burden the drafting and adoption of the constitution with major differences of opinion on this subject, it was left alone.
- Amendment 15 is the third of three Amendments in the Reconstruction phase. Amendment 13 prohibits slavery. The 14th requires states to provide equal protection for all. And Amendment 15 states that the right to vote cannot be denied on the basis of race.
- However, this amendment was not respected for a century. Until 1965, The Supreme Court accepted that in countless ways additional requirements were placed on black people to be allowed to vote: proof of reading, proof of good character, payment of poll taxes and other measures to keep black people away from polling stations. This period is called the 'process of disenfranchisement'.
- In 1965, Congress put an end to this by introducing the Voting Rights Act (VRA). This gave the federal government and the federal courts the power to ensure that the right to vote was not denied on the basis of race.
- This amendment, with its emphasis on combating racial discrimination in elections, is seen as a small addition to Amendment 14, which covers the right to vote more generally.

Amendment 16: Income tax

Passed by Congress July 2, 1909. Ratified by the States February 3, 1913. The 16th Amendment changed a portion of Article I, Section 9. See for the adaptation of Article I, Section 9: https://constitutionus.com.

"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among several States, and without regard to any census or enumeration."

Annotations

- As a reinforcement of Article I, Section 8 of the Federal Constitution, Amendment 16 is the basis for building a financially powerful federal government through a modern national tax system. It became the main source of income for the federation.
- There was first a distinction between direct and indirect taxes. Direct (income) taxes were distributed among the states on the basis of population size. This meant that if a state had one-tenth of the total population, it also had to provide

one-tenth of the total tax revenue. This did not apply to indirect taxes such as import duties, levies, and excise duties. But that system of 'apportionment' became too cumbersome and has been replaced by a system that applies uniformly to all states.

- Amendment 16 thus changed the character of the federal government considerably. From a modest federal government, relying mainly on revenue from taxes on consumer goods and import tariffs, to a powerful modern government that was able to weather two World Wars and a Cold War on the basis of the federal income tax.

Amendment 17: Popular Election of Senators

Passed by Congress May 13, 1912. Ratified by the States April 8, 1913. The 17th Amendment changed a portion of Article 1, Section 3. See for the adaptation of Article I, Section 3: https://constitutionus.com.

"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 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."

Annotations

- This amendment changed the institutional structure of Congress. No longer were Senators elected by the parliaments of the states, but by the voters in each state.

Special note


Sixty-second Congress of the United States of America:
At the Second Session,
JOINT RESOLUTION

It marked a break in the fundamental nature of the bicameral system. Until 1913, the difference in electing Representatives by the people, versus Senators chosen by States' parliaments was an element of checks and balances. House Representatives stood for the interests of the people. Senators for the interests of their states. By having the Senate elected by the people, that balance is lost.

Our federal constitution for the United States of Europe favors the election of Senators by the parliaments of the Member States of the United States of Europe. Senators have an individual mandate, exercise their office without instructions from their respective parliaments and without the right of parliaments to recall Senators.

Amendment 18: Prohibition of Liquor

Passed by Congress December 18, 1917. Ratified by the States January 16, 1919. Repealed by 21st Amendment, December 5, 1933.

"Section 1
After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purpose is hereby prohibited."

"Section 2
The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation."

"Section 3
This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress."

Annotations

- This infamous amendment was the basis for the so-called 'prohibition' in the United States. It prohibits only the manufacture, sale, and transportation of alcoholic beverages. Not the consumption, possession, or manufacture for personal use.
- It only came into force after a year and the states had to adapt their own legislation to this amendment within seven years.
- It led to the introduction of the National Prohibition Act of 28 October 1919, which gave the US Treasury Department executive authority. On 17 January 1920, nationwide prohibition began.
- Amendment 18 was repealed by the 21st Amendment on 5 December 1933.

Amendment 19: Women's Right to Vote

Passed by Congress June 4, 1919. Ratified by the States August 18, 1920.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.
Congress shall have power to enforce this article by appropriate legislation."

Annotations

- As was the case in many countries, it took a long time before women got the right to vote. They had to fight for it. Although those fights began after the

Federal Constitution came into force at the end of the 18th century, it took almost another century, until the elections of 1872, before women could justify a right to vote by reference to Amendments 14 and 15.

- Under these amendments, the right to vote belongs to all Citizens. Women are Citizens, so women demanded the right to vote. But when a woman was actually allowed to vote in 1872, she was arrested two weeks later and convicted of illegal voting. At the time, the Supreme Court still ruled that the right to vote alone was not sufficient to grant women the right to vote.
- From that time on, supporters of women's right to vote sought a constitutional basis for that right. And that was achieved with this Amendment 19 in 1920.
- With the advent of women's suffrage, the electorate expanded considerably. It also significantly changed the approach of those who were seeking political office. When they realised that about half of the voters were women, they were forced to pay attention to what women thought was important.

Amendment 20: Presidential Term and Succession, Assembly of Congress

Passed by Congress March 2, 1932. Ratified by the States January 23, 1933. The 20th Amendment changed a portion of Article 1, Section 4, and a portion of the 12th Amendment. See for the adaptation of Article I, Section 4: https://constitutionus.com.

"Section 1
The terms of the President and the Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin."

"Section 2
The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day."

"Section 3
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 shall not have been chosen before the time fixed for the beginning of his term, 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 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."

"Section 4
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."

"Section 5
Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article."

"Section 6
This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

Annotations

- This amendment can boast of the fact that it has never led to a case in the Supreme Court and only rarely to litigation at the level of the states.
- Only Section 1 and 2 have actually been used. They set the date on which members of the House of Representatives and the Senate, as well as the President and Vice-President, take office after elections. They also stipulate that Congress shall begin a new session on 3 January each year.
- Section 3 specifies what should happen if the elected but not yet inaugurated President dies before taking office.
- Section 4 empowers Congress to devise procedures to elect a President and Vice-President in the event that no candidate achieves a majority in the election.
- Sections 5 and 6 specify the effective date of this amendment and the time by which the ratification period must be completed by three-fourths of the parliaments of the states.

Amendment 21: Repeal of Prohibition

Passed by Congress February 20, 1933. Ratified by the States December 5, 1933. The 21st Amendment repealed the 18th Amendment.

"Section 1
The eighteenth article of amendment to the Constitution of the United States is hereby repealed."

"Section 2
The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

"Section 3
This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress."

Annotations

- This amendment ended prohibition in the USA.
- A peculiarity is that the ratification process at the level of the states was not done by parliaments but by so-called 'ratifying conventions', mentioned in Section 3. Article V of the Federal Constitution recognises both methods.

Amendment 22: Two-Term Limit on Presidency

Passed by Congress March 21, 1947. Ratified by the States February 27, 1951.

"Section 1
No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term."

"Section 2
This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the Congress."

Annotations

- During the Confederation from 1776 to 1789, the Confederate Congress held both legislative and executive power. There was no President. The Philadelphia Convention had to figure that out for itself in 1787. All they knew was that it should never resemble the model of the despotic English King.
- Remarkably, Madison and Hamilton were advocates of a lifetime occupation of the office of President, chosen by Congress and not by the people. This form of 'elective monarchy' was, however, rejected by the Convention.
- Because the first President, George Washington, resigned after two terms, this became the custom. Not because the constitution required a President to serve only two terms.
- In the WWII this custom was broken. Under the exceptional circumstances of the war, President Roosevelt received a third and a fourth term.
- But when the war was over, the fear that always exists in America about a President who will oppress the people if he is allowed to stay in power for too long was born again. Hence this Amendment 22: two terms and no more. Even though Ronald Reagan and Barack Obama have argued for a third term.

Amendment 23: Presidential Vote for D.C.

Passed by Congress June 16, 1960. Ratified by the States March 29, 1961.

"Section 1
The District constituting the seat of government of the United States shall appoint in such manner as the Congress may direct: A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a state; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment."

"Section 2
The Congress shall have power to enforce this article by appropriate legislation."

Annotations

- This Amendment 23 governs the way in which citizens in the District of Columbia, the seat of the federal government, may participate in the Presidential election. Washington D.C. is not one of the fifty states of the federation.
- Citizens elect Electors who then compete in the Electoral College for the formal election of the President and Vice-President.
- Before this amendment existed, citizens in Washington D.C. could not vote unless they had the constitutional right to vote as a citizen of a state.
- Congress rules Washington D.C., but the district has a slight form of self-government. Even though it is not a state, it still has to contribute its share of taxation. It has no delegates in Congress.
- A 1978 amendment to treat the District as if it were a state did not get enough ratifications from the states.

Amendment 24: Abolition of Poll Taxes

Passed by Congress August 27, 1962. Ratified by the States January 23, 1964.

"Section 1
The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax."

"Section 2
The Congress shall have power to enforce this article by appropriate legislation."

Annotations

- The constitution contains no provisions that voters must comply with. That is left to the states. This implies that states may each impose their own procedural requirements on voters.
- In the early years, many states stipulated that only property owners would have the right to vote. They believed that only those individuals had sufficient interest and power to participate in elections.
- Instead of ownership as a qualification for the right to vote, some states introduced a tax to be able to vote: the so-called 'poll tax'. In this way, the number of people with voting rights increased because non-owners could have money to pay the poll tax. The size of the electorate also increased because the government indicated how the tax revenue was used.
- Around the middle of the 19th century, most states abolished property requirements or poll taxes and granted suffrage to free white people. With the advent of the 15th Amendment, this was extended to all men, regardless of race, colour or previous condition of servitude.
- As part of the efforts to undermine the freedom laws of the Reconstruction period after the Civil War - including the 15th Amendment of 1870 - the poll tax reappeared in some states, restricting the right to vote somewhat to the privileged class of white people. The Supreme Court regularly upheld the validity of these poll taxes.
- By 1962, most states had abolished this system again. Except in Alabama, Arkansas, Mississippi, Texas and Virginia. But in that year, the Civil Rights Movement got a boost when President John Kennedy supported the abolition of poll taxes and literacy tests.
- With the arrival of Amendment 24, poll taxes were abolished in federal elections. However, they remained allowed in elections within states and municipalities.
- In 1966, the Supreme Court ruled that poll taxes were prohibited in elections within all states and local elections under the Equal Protection Clause of Amendment 14.

Amendment 25: Presidential Disability and Succession

Passed by Congress July 6, 1965. Ratified by the States February 10, 1967. The 25th Amendment changed a portion of Article II, Section 1. See for the adaptation of Article II, Section 1: https://constitutionus.com.

"Section 1
In case of the removal of the President from office or of his death or resignation, the Vice President shall become President."

"Section 2
Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress."

"Section 3
Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President."

"Section 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 Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If 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 his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office."

Annotations

- This amendment resolves some of the questions that arose in interpreting Article II, Section 1. The specific reason for drafting this amendment was the assassination of President Kennedy on 22 November 1963.
- Section 1 was applied when President Nixon resigned in 1974 and Vice-President Gerald Ford became President.
- Section 2 was implemented when Spiro Agnew resigned as Vice-President in 1973, making Gerald Ford Vice-President. So, when he became President a year later, he had to nominate a new Vice-President on the basis of Section 2.

- Sections 3 and 4 deal with inability of the President. Section 3 is when the President himself indicates that he is no longer able to lead the country.
- Section 4 is for the situation when others, led by the Vice-President, feel that the President is no longer capable of running the country.
- Section 4 played a major role after the storming of the Capitol on 6 January 2021 because there were strong indications and/or suspicions that President Trump had instigated that storming with tweets and speeches. That was seen as a mental unfitness of the President to lead the country. In the end, Vice President Mike Pence decided not to use the Twenty-Fifth. When it became clear that Vice-President Pence had no intention of applying Amendment 25, the House of Representatives decided to impeach President Trump. After his resignation on 20 January 2021, the Democrats in the Senate failed to secure a majority of 67 out of 100 votes so that Donald Trump, for the second time, escaped a full impeachment.

Amendment 26: Right to vote at Age 18

Passed by Congress March 23, 1971. Ratified July 1, 1971. The 26th Amendment changed a portion of the 14th Amendment. See for the adaptation: https://constitutionus.com.

"Section 1
The right of citizens of the United States, who are 18 years of age or older, to vote, shall not be denied or abridged by the United States or any state on account of age."

"Section 2
The Congress shall have the power to enforce this article by appropriate legislation."

Annotations

- This amendment gives young people 18 years of age the right to vote. It used to be 21.
- Congress can enforce that prohibition by making further laws.
- This is the last amendment in a series of amendments in 100 years to expand and protect the right to vote.
- This amendment has been used most often by students. The Constitution assumes that voters cast their votes where they live. There, they must register as voters in order to vote. However, students live near the place where they are educated. Some courts regularly rule that students who do not intend to actually live where they study are not entitled to register as voters there. Other courts rule that it is not permissible to impose such a restriction on the right to vote on students. They require the relevant authorities to accept the place where the student studies as the place where the vote may be cast.

Amendment 27: Congressional Compensation

Originally proposed September 25, 1789. Ratified by the States May 17, 1992.

"No law varying the compensation for the services of the Senators and Representatives shall take effect until an election of Representatives shall have intervened."

Annotations

- Congress accepted this amendment back in 1789, along with the Bill of Rights, but it took until 1992 for it to be ratified by the States.
- It prohibits the raising of salaries of members of Congress during a legislature.
- During the Philadelphia Convention, the framers of the federal constitution, paying members of the intended Congress was a topic of discussion for two days. A group led by Benjamin Franklin opposed it on the grounds that public servants should not be paid because otherwise they would become brutal, violent, and only focused on their own interests. However, the majority of the Convention decided to accept payment in order to prevent only the wealthy from becoming members of the House of Representatives or the Senate.
- Nevertheless, the problem was that under Article I, Section 6, the remuneration was based on a law. Well, it is the Congress itself that makes the laws. So there was a fear that they would make themselves rich.
- In 1789, James Madison proposed twelve amendments. The first ten formed the Bill of Rights. One of the two others - accepted by Congress but not yet ratified by the States - concerned what became the 27th Amendment only in 1992.
- Madison wanted salaries but not without a limit. And not through the President either, otherwise he would gain too much power over Congress. So he proposed that a new law on (increasing) salaries could only be passed after new elections had taken place. Then the voters could indicate whether they thought it was a good thing.
- This amendment was ratified by only six states. However, Congress had not set a time limit for the ratification process as it did later with other amendments.
- In 1982, a student at the University of Texas wrote a thesis on the fact that this amendment had still not been fully ratified. When he received a bad mark for that paper, he resolved to do everything in his power to get ratification completed. This finally led to the prescribed ratification by 38 states in 1992.

8.5 Conclusion

Although amending the Federal Constitution of America is not a simple matter, it nevertheless took place twenty-seven times. It is to be expected that there will be more amendments in the future. The following Chapter 9 may foreshadow this.

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9. THREE OPINIONS ON AMENDING THE US CONSTITUTION AGAIN

9.1 Introduction

One of the remarkable aspects of America is the attachment of its people to the Federal Constitution. Next to the Bible, it is probably the most widely read book. People know about important articles and amendments. Media publish almost daily discussions about the meaning of what the founding fathers of 1787 came up with. Including ideas and proposals to amend the Constitution. During Donald Trump's second impeachment, the Constitution and the interpretation of Trump's behaviour leading up to and during the storming of the Capitol on 6 January 2021 was the talk of the day.

Professor Jeffrey Rosen, President and CEO of the National Constitution Center (NCC) in Philadelphia, launched a project in 2020 to have three different groups of experts write a report on what they would like to change about the federal Constitution. A conservative, a libertarian and a liberal group. The result was surprising. None of these groups advocated abolishing the Federal system. There were certainly differences of opinion, but also important similarities. To name a few:

- The conservative and liberal groups both advocated a new system for electing the President: popular vote instead of the seriously outdated Electoral College electoral system. They also prefer a term of eighteen years for the members of the Supreme Court. On the issue of gun ownership, they favour the possibility of giving governments the power to restrict gun ownership with reasonable measures.

- The conservative and libertarian groups advocated returning to the system of appointing Senators by the Parliaments of the States. This choice was also made in our draft federal Constitution for Europe.

- All three teams recommend limiting the power of the President, the possibility of impeaching the President for non-criminal offences and strengthening the powers of Congress in terms of Congressional Oversight.

- It is noteworthy that the three teams do not wish to exchange the Presidential system for a Parliamentary or Unitarian system. As described in 10.2 a Presidential system is the ultimate form of checks and balances of the three branches of government. In a Parliamentary system, Parliament is the boss. In a Unitarian system, the President is the boss. Both models would destroy the

basis of the federal Constitution as designed by the Philadelphia Convention. See Chapter 10.

Since we are dealing here with (a) the first federal constitution in the world, (b) the strongest federal constitution in the world and (c) the best practice for Europe, we are not going to post an overview of the broad outlines of the reports of these three groups ourselves but quote literally an article by Professor Jeffrey Rosen and one by Professor Ilya Somin. For two reasons. Firstly, to encourage the members of Europe's many federal movements to acquire this kind of knowledge and thus to enthuse the people of Europe about the political foundations of a federal Europe. After all, it is the people of Europe to whom the federal Constitution is being submitted for ratification.

Alexander Hamilton has a fitting quotation for this enthusiasm:

> "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."

Secondly, as a foundation for our Citizens' Convention. Our draft federal Constitution can undoubtedly be improved. Both articles contain interesting points of view for the Citizens' Convention.

See both articles below.

9.2 Jeffrey Rosen: 'What if we wrote the constitution today?'

Proposals from libertarian, conservative, and progressive scholars displayed a few striking differences—but also some profound similarities.
The Atlantic, DECEMBER 8, 2020

Jeffrey Rosen
Contributing writer at *The Atlantic* and President and CEO of the NCC.

As the world's oldest written constitution, the U.S. Constitution has been remarkably resilient. For more than 230 years, it has provided the foundation for America's economic prosperity, political stability, and democratic debate. But during the past two centuries, changes in politics, technology, and values have led many to assume that if Americans set out to write a new Constitution today, the document would be quite different. To find out what a new Constitution might look like, my colleagues and I at the National Constitution Center recently asked three teams of scholars—conservative, progressive, and libertarian—to draft new Constitutions for the United States of America in 2020 from scratch.

The results surprised us. As expected, each of the three teams highlights different values: The team of conservatives emphasizes Madisonian deliberation; the progressives, democracy and equality; and the libertarians, unsurprisingly, liberty. But when the groups delivered their Constitutions—which are published here—all three proposed to reform the current Constitution rather than abolish it.

From the October 2020 issue: The flawed genius of the Constitution

Even more unexpectedly, they converge in several of their proposed reforms, focusing on structural limitations on executive power rather than on creating new rights. All three teams agree on the need to limit presidential power, explicitly allow presidential impeachments for non-criminal behavior, and strengthen Congress's oversight powers of the president. And, more specifically, the progressive and conservative teams converge on the need to elect the president by a national popular vote (the libertarians keep the Electoral College); to resurrect Congress's ability to veto executive actions by majority vote; and to adopt 18-year term limits for Supreme Court justices. The unexpected areas of agreement suggest that, underneath the country's current political polarization, there may be deep, unappreciated consensus about constitutional principles and needed reforms.

The conservative team, composed of Robert P. George of Princeton, Michael W. McConnell of Stanford, Colleen A. Sheehan of Arizona State, and Ilan Wurman of Arizona State, focuses on structural reforms designed to improve the country's political discourse. Many of their proposed changes, they write, "are designed to enable elected officials to break free of the grip of faction and once again to deliberate, with the aim of listening attentively to, as well as educating, public opinion, and promoting justice and the public good." The changes they describe as most "radical" are reducing the size of the Senate to 50 members to encourage genuine deliberation, increasing senatorial terms to nine years and the presidential term to six years—both with no possibility of reelection—and (in a proposal the libertarian team also put forward) reintroducing senatorial appointment by state legislatures. In their view, these reforms would encourage elected officials to vote their conscience and focus on the common good rather than partisan interests.

The progressive team, composed of Caroline Frederickson of Georgetown University, Jamal Greene of Columbia, and Melissa Murray of New York University, also finds much to admire and preserve in the original constitutional structure. "We wanted to make clear our own view that the Constitution, as drafted in 1787, is not completely incompatible with progressive constitutionalism," they write. "Indeed, in our view, the original Constitution establishes a structure of divided government that is a necessary precondition for a constitutional democracy with robust protections for individual rights." The goal, in their proposed changes, is to secure the blessings of liberty and equality promised by the Declaration of Independence, by doing more to strengthen the "structural protections for democratic government." Rather than abolish the Senate, the progressive team would make it more representative, with one senator for each state and "one additional senator [for] every one-hundredth of the national population." For example, California would have 13 senators, Texas would have seven, Florida nine, and 22 states (including Washington, D.C.) one. Senators would serve for one six-year term. The progressives would also decrease fundraising pressure on representatives by extending the House term from two to four years, and by making clear that the government has the power to set both spending and contribution limits in political campaigns. Their proposed Progressive Constitution would also codify judicial and legislative protections for

reproductive rights and against discrimination based on gender, sexual orientation, gender identity, pregnancy, and childbirth.

The authors of the proposed Libertarian Constitution—Ilya Shapiro of the Cato Institute, Timothy Sandefur of the Goldwater Institute, and Christina Mulligan of Brooklyn Law School—emphasize their intent to clarify the original Constitution, not replace it. "At the outset," they write, "we joked that all we needed to do was to add 'and we mean it' at the end of every clause." Their particular focus is resurrecting limitations on the commerce clause. Since the New Deal era, the Supreme Court has interpreted the commerce clause to grant Congress essentially unlimited power to regulate anything that might have a tangential effect on interstate commerce. The libertarians would allow regulation only of actual interstate commerce, not of noncommercial activity that takes place within one state. They would also limit federal power in other ways, requiring all federal regulations to be related to powers enumerated in the Constitution and prohibiting the federal government from using its powers of the purse to influence state policies. Like the conservative team, the libertarians would return the selection of senators to the states, in the hope of promoting federalism. The libertarians also include a series of other restrictions on state and federal power to protect economic liberty, such as limiting the states from passing rent-control or price-control laws, prohibiting the states and the federal government from subsidizing corporations, providing for a rescission of national laws by a two-thirds vote of the states, and requiring a balanced federal budget.

Jeffrey Rosen: The fourth battle for the Constitution

Although all three Constitutions maintain a balance between state and federal power, the main differences among them concern how they strike that balance, with the libertarians imposing the greatest restrictions on federal power and the progressives the least. (In this respect, their debates resemble those of the original Framers in Philadelphia.) But, strikingly, all three Constitutions embrace structural reforms to ensure that the balance among presidential, congressional, and judicial power is closer to what the original Constitution envisioned, with all three branches checking each other, rather than an imperial president and judiciary checking a passive and polarized Congress.

Most notably, all three Constitutions seek significant limits on executive power. The three teams all clarify that the president's power to execute the law is not a freestanding power to make laws: The conservatives emphasize that executive orders don't have legal effect unless authorized by Congress; the libertarians underscore "that the power of the executive branch constitutes the power to 'execute the laws' and not some broader, freestanding power"; and the progressives propose that "Congress's oversight authority over the executive branch must be made more explicit to ensure it can effectively police wrongdoing in program administration or otherwise." To increase Congress's oversight powers over the president, both the Conservative and Progressive Constitutions would resurrect the so-called legislative veto, which the Supreme Court struck down in 1982, allowing Congress to repudiate presidential regulations and executive orders by majority vote. For both teams, the resurrection of the legislative veto would allow Congress to take the lead in lawmaking, as the Framers intended.

Along the same lines, all three Constitutions would relax the standards for impeachment, making explicit that the president can be impeached for non-criminal offenses. At the same time, both the Conservative and Progressive Constitutions would require a three-fifths vote in

the House, to reduce the risk of partisan impeachments. The conservatives also note that "it is generally improper for the President personally to direct prosecutions" and that "the President may not pardon himself or the Vice President." The progressives include other reforms, such as requiring a two-thirds vote in the Senate for the confirmation of the attorney general, "to ensure that the law enforcement power of the federal government is not abused for partisan gain."

On the election of the president, the conservatives and progressives once again converge on nearly the same language, with both teams providing that the president shall "be elected by a national popular vote conducted using a ranked-choice voting method." While agreeing that the Electoral College system for choosing among candidates is not democratic enough, the conservatives believe that the system for selecting candidates undervalues experience and character; therefore, they would abandon the presidential primary system, allowing presidential candidates to be selected by elected representatives at the state level. Resurrecting a proposal that was nearly adopted at the original Constitutional Convention, the conservatives would also limit presidents to a single six-year term, to encourage them to focus not on reelection but on the common good.

Finally, there is the Supreme Court. Once again, the conservative and progressive teams agree, this time on the need for 18-year term limits for justices. And the libertarians leave the question of Court terms open (their team's leader, Ilya Shapiro, recently endorsed limits in his new book, *Supreme Disorder*), but they decide not to propose them, in the spirit of avoiding what they call purely "good government" reforms, without clear libertarian salience. This convergence suggests that if President-elect Joe Biden does, in fact, convene a commission to examine judicial reform, term limits for justices will be a proposal that has the potential for broad cross-partisan support.

Read: No other Western democracy allows this

It is on the subject of rights, rather than constitutional structures, that disagreements among the three teams really emerged. All three teams maintain and even strengthen most of the existing provisions of the Bill of Rights (the libertarians and progressives even update the Fourth Amendment's prohibition on unreasonable searches and seizures for a digital age). However, each Constitution also adds provisions about rights that reflect the teams' unique concerns. For example, the progressives try to increase democracy and reduce judicial power by providing that all rights are subject "to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." By contrast, the libertarians create the opposite presumption for courts to apply in evaluating claims about rights, emphasizing that whenever government infringes on the presumption of liberty, "courts shall determine whether that government has constitutional authority for its action and a genuine justification for its restriction or regulation."

The three teams also strongly disagree about how to strike the balance between liberty and regulation when it comes to the First Amendment rights of speech and religion. All teams would include explicit protections for freedom of conscience, but they define it in different ways. The Conservative Constitution declares, "All persons have the inalienable right to the free exercise of religion in accordance with conscience," but, like the conservative justices on the Supreme Court, makes clear that the free exercise of religion cannot be impeded "except where necessary to secure public peace and order or comparably compelling public ends." The Libertarian Constitution emphasizes that "the freedoms of speech and conscience include

the freedom to make contributions to political campaigns or candidates for public office." The Progressive Constitution, by contrast, provides that "everyone shall have the right to freedom of thought, conscience, and religion" but emphasizes that "Congress and the legislature of any State shall … have the power to establish by law regulations of the financing of campaigns for elected office, provided that such regulations are reasonably aimed at ensuring that all citizens are able to participate in elections meaningfully and on equal terms." In the three Constitutions, as on the Court today, the progressives diverge from the conservatives and libertarians on campaign-finance restrictions and on religious exemptions from generally applicable laws.

Another divergence is on the topic of gun rights. Unsurprisingly, the conservative team proposes a Constitution that clearly recognizes an individual right to keep and bear arms "ordinarily used for self-defense or recreational purposes," but it does allow for the federal and state governments to pass "reasonable regulations on the bearing of arms, and the keeping of arms by persons determined, with due process, to be dangerous to themselves or others." The progressive proposal, by contrast, does not explicitly recognize an individual's right to bear arms for the purpose of self-defense, but emphasizes, like the conservatives, that gun ownership is "subject to reasonable regulation." The libertarian version alone contains no provisions for the regulation of gun rights, stating unequivocally, "The right of the people to keep and bear arms shall not be infringed."

I don't want to understate the philosophical and practical disagreements among the three Constitutions: The libertarians' emphasis on liberty leads to a much more constricted version of federal power to regulate the economy, for example, than either the progressives or the conservatives, who want to restore Congress's primary role in making laws and checking the president. But the areas of agreement—reining in presidential power and reducing partisanship in Congress—are far more surprising than the areas of disagreement.
The most striking similarity is that all three teams choose to reform the Constitution rather than replace it. And all three focus their reform efforts on structural and institutional protections for liberty and equality rather than creating a laundry list of new rights. As Shapiro put it in a recent interview about the project, "Why start from scratch when we can build on James Madison's genius?"

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9.3 Ilya Somin: 'Constitution Drafting project highlights areas of potential consensus on constitutional reform'

Constitution Daily, January 13, 2021, by Ilya Somin

The National Constitution Center recently conducted a fascinating exercise in which it brought together three groups to produce their own revised versions of the Constitution: a conservative team, a libertarian team, and a progressive one. Each team included prominent scholars and legal commentators affiliated with their respective camps. The results revealed substantially more convergence on key issues than might have been expected in our highly polarized times.

There are important and often unsurprising differences between the three groups. But there are also several notable points of agreement that could potentially serve as the basis for a program of constitutional reform that might have a real chance of being enacted.

All three teams agreed that the 1787 Constitution should be revised rather than totally superseded, that there should be tighter limits on presidential power, that the state and federal governments should be stripped of much, if not all, of their "sovereign immunity" from lawsuits, and that immigrants should be eligible for the presidency. It is also likely that the three teams agree on the need for term limits for Supreme Court justices, though the libertarians did not actually include this idea in their proposed constitution.

The participants are all prominent constitutional law scholars and commentators. The libertarian team was led by Ilya Shapiro of the Cato Institute, the nation's leading libertarian think tank, and included Timothy Sandefur of the Goldwater Institute and Christina Mulligan of Brooklyn Law School. I should perhaps note that Shapiro is a different person from me, though we often get confused with each other. The progressive group was headed by Caroline Fredrickson of Georgetown and included Jamal Greene of Columbia Law School and Melissa Murray of New York University School of Law. Caroline Frederickson is the former president of the American Constitution Society (liberal counterpart to the Federalist Society). The conservatives were led by Ilan Wurman of Arizona State University College of Law and included Robert P. George of Princeton University, Michael McConnell of Stanford Law School (a prominent former federal judge), and Colleen A. Sheehan of Arizona State University.

Each team produced a rewritten version of the Constitution, and an introduction explaining the changes they made from the status quo. The Progressive Constitution and Introduction are available here, the conservative versions are here, and the libertarian ones here.

NCC President Jeffrey Rosen summarized some of the key similarities between the three drafts in an *Atlantic* article on the project. As he recognized, agreement on preserving the basic framework of the 1787 Constitution, with its federalism and separation of powers, is significant. Critics of the Constitution have long argued that the US would be better off with a parliamentary system, a unitary state, or some combination of both. It is notable that all three groups rejected such ideas. Another noteworthy point of convergence in favor of the status quo is that none of the three teams would introduce any significant new "positive" rights to various kinds of government benefits, of the sort common in many European constitutions. Interestingly, the progressive drafters deliberately chose *not* to follow the example of left-liberal constitutional drafters in many other countries on this point (a decision I commend, though some of their ideological allies might not agree).

Even more notable is agreement on several key reforms, most notably the need to limit presidential power. Recent history, including dubious power grabs by presidents of both parties, have persuaded most constitutional experts across the political spectrum that the current system concentrates too much power in the hands of a single person.
All three proposals would allow Congress impeach and remove the president for abuses of power that fall short of being federal crimes, thereby resolving a longstanding ambiguity in the current Constitution. The progressive and conservative constitutions make it easier to convict presidents, by reducing the supermajority needed to convict in the Senate from two-thirds (67 of 100 votes) to three-fifths (60); though both also impose a similar requirement for impeachment in the House.

All three drafts also strengthen congressional oversight of the executive branch and reduce presidential control over federal spending and regulation. The three teams pursue these goals by different means. The conservatives propose a variety of measures for directly strengthening congressional oversight of spending and tying it more closely to taxation. The libertarians would impose tight limits on the purposes for which funds can be spent, allow "taxpayer standing" for lawsuits challenging misuses of public funds. Both conservatives and libertarians include provisions imposing tight constraints on presidential power to make law by executive order. For their part, the progressive team explicitly allows Congress to set up independent agencies (an idea directly at odds with parts of the conservative draft), and enhances Congress' power to demand information and testimony from the executive for oversight purposes. Both the conservative and progressive drafts give Congress a "legislative veto" over various executive branch policies, thereby enabling them to pass legislation rescinding such actions without facing the prospect of a veto from the president. The conservatives would limit the president to a single six-year term, forbidding reelection.

It may not be easy to combine these ideas into a unified whole, approved by all three groups. But the three do converge on the basic idea that the White House exercises too much power over federal regulation and spending. More exploration is needed to find ways to achieve these goals that could attract broad cross-ideological support.

All three teams also likely agree on the need for18-year term limits for Supreme Court justices. The libertarian group omitted this from their draft constitution only for tactical reasons (because they wanted to focus on specifically libertarian proposals, as opposed to generic "good government" measures). Elsewhere, team leader Ilya Shapiro has endorsed the idea, and it enjoys considerable support among other libertarian legal scholars and commentators (myself included).

I doubt that 18-year term limits would eliminate or even greatly reduce partisan conflict over judicial appointments. But they would curb several other pathologies, including the tendency to appoint younger justices (so they would serve for longer), strategically timed judicial retirements, and arbitrary accidents of fate that give some presidents a large number of Supreme Court appointments, and others few or none. As life expectancy continues to increase, term limits would also forestall the dangerous possibility of having justices who serve for fifty or sixty years, or even longer.

In addition to the points of convergence highlighted by Rosen, all three teams would abolish the Eleventh Amendment, which has been interpreted by the Supreme Court as giving states broad "sovereign immunity" against a variety of constitutional and statutory lawsuits brought

by private citizens. The conservative constitution puts it best in proposing to replace sovereign immunity with an explicit statement that “Neither the United States nor any State shall enjoy immunity from suit in the courts of the United States.” Sovereign immunity has been interpreted by courts to prevent a wide range of lawsuits against federal and state governments for violating constitutional and statutory rights. Abolishing it would do much to curb abuses of government power.

Yet another point of agreement is that all three teams would abolish the requirement that the president must be a “natural born” citizen (i.e. – a citizen from birth), thereby allowing immigrants to hold the nation's highest political office. The Natural Born Citizen Clause was probably initially inserted in the Constitution because of fears that European royalty might move to the United States and seek the presidency in order to benefit their families back in Europe. This concern was overblown even back in the 1780s and is even less plausible today. Modern rationales for the Clause are little better, largely relying on unsubstantiated claims that immigrants are less likely to be loyal than natives. Abolishing the Clause would eliminate an instance of discrimination based on arbitrary circumstances of birth, similar to discrimination on the basis of race, ethnicity, and gender.

It is too early to say that these areas of agreement can result in successful constitutional amendments. The obstacles to enacting any significant amendment are high, and the three teams' views are not fully representative of their respective political camps. For example, there are likely many conservatives who do not share the NCC team’s enthusiasm for abolishing the Natural Born Citizen Clause. Many state and local governments (and some federal officials) are likely to oppose abolition of sovereign immunity. Nonetheless, the points of convergence between the three teams are at least plausible candidates for amendment initiatives which deserve serious consideration.

All three proposed drafts include useful ideas aside from those on which there is convergence. The conservative version forestalls court-packing by fixing the number of justices at nine and proposes a ranked-choice voting method for the presidency that might well be an improvement over the status quo. The progressive constitution includes thoughtful proposals combatting gerrymandering by requiring legislative districts to be drawn by independent commissions, banning discrimination on the basis of sex and sexual orientation, and protecting secular exercises of conscience on the same basis as the free exercise of religion. As a libertarian myself, I particularly like the libertarian team’s proposals for abolishing most immigration restrictions, banning nearly all forms of state-mandated labor - including the military draft, and strengthening protection for property rights and economic liberties. Obviously, I also differ with all three teams on some of their proposals, particularly the conservatives and progressives. And none of the three addresses the full range of items on my list of “Things I Hate About the Constitution.”

Overall, the National Constitution Center and its three teams have made a valuable contribution to the debate over constitutional reform. The major points of agreement between the teams could potentially be the basis for future constitutional amendments that have a real chance of enactment, because of the potentially broad support they attract. No significant amendment has actually been ratified since the Twenty-Sixth Amendment, enacted in 1971, barred age discrimination in voting rights against citizens over the age of 18.

Even the ideas the three teams agree on would face an uphill struggle in the constitutional amendment process, by virtue of the fact that enactment usually requires an overwhelming

supermajority of two-thirds of both houses of Congress and three-fourths of the states. The alternative mechanism of amendment by a convention of the states is comparably onerous. But it is clear that some aspects of the Constitution can use reform. The NCC constitution-drafting project could potentially be the first step in the admittedly difficult process of achieving it.

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10. SOME SPECIAL ELEMENTS OF THE US FEDERATION

10.1 Introduction

For the organisation and functioning of the United States of Europe, it is good to look at some specific aspects of the functioning of the Congress, the Presidency, and the Supreme Court of the USA. These three branches of the State - known as the trias politica - are kept apart by the hard principle of checks and balances to prevent one of them from dominating the others and creating another form of tyranny. The fear of this was one of the most fundamental motives for the Philadelphia Convention of 1787 to design the Federal Constitution as the foundation for establishing and maintaining democracy.

Two quotations support this:

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".

But over the years, these three branches have gradually expanded their original powers. Incidentally, this has not led to usurpation of powers by any of them. That it nevertheless sometimes happens that a deadlock occurs in the USA - and even the threat of usurpation - is caused by the seriously outdated electoral system. The combination of district-based voting (instead of proportional representation by popular vote), with the winner takes all as a principle, creating a two-party system, combined with Gerrymandering (changing district boundaries to favour a party) and PACs (supporting a party with many millions of dollars), has under the presidency of Donald Trump led to a cooperation of the President and the GOP-dominance in the Senate that blocked the House of Representatives in its legislation and in the appointment of Supreme Court justices - and federal court justices.

In our draft Federal Constitution for the United States of Europe, such threats to democracy in Europe do not exist. The fact that people in Europe are used to working with coalitions instead of a two-party system also inhibits the emergence of such threats.

This chapter is devoted to the ways in which the three branches of government have stretched their powers, without any of them gaining absolute power.

10.2 The Presidential system, Parliamentary Democracy and Representative Democracy in the USA

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. The President cannot dissolve Congress. However, he can veto laws drafted by Congress. But Congress can overrule such a veto.

The veto-power by the President raises the question if such a power, exercised by one person, is not going too far? The answer is: no. Why not? Because a) the federal system provides that powers exercised at the federal level are limited in number and are also limitatively enumerated; and b) there is always another branch – either Congress or the Supreme Court - authorised to curb the power of the President.

The limited and limitative enumeration – leaving the Member States and the Citizens sovereign in all other domains – may even convince the staunchest anti-federalist that a Federal State is no super state, nor will it evaporate the diverse Member States. In professional terms: the non-exclusively assigned policy domains – the so-called residuary domains – remain with the Member States and the Citizens.

Let us compare three different systems. That of a Presidential system, versus a Parliamentary Democracy and the Representative Democracy.

Firstly: what is a Presidential system actually? The main feature is the fact that the President is elected by the people, as is the House of the Representatives. In our draft federal Constitution, the House of the Citizens. Both have a democratic mandate. However, the House is entitled to decide about the matters ranging from a) to p), and the President 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 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 Congress or one of the two Houses at one hand and the President at the other hand, a stalemate can occur, for a while. Yet it is preferable to 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.

There is another reason to question fundamentally the democratic nature of Parliamentary Democracy. In Europe the actual parliamentary democracies no longer correspond with their formal constitutional description. A Parliamentary Democracy means that Parliament appoints the Government (the Executive branch) 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 outside of the decision-making game, only able to co-govern with the Executive branch; or in last resort to send the Executive branch 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 in fact a clinical dead body. It does not stand for Parliament, nor for Democracy. The Executive power decides, and that is final. This is contrary to the original constitutional goals of a Parliamentary Democracy which were meant to maintain democracy at the highest level. In fact, the post-war history of European parliamentary democracies has shown how they have slowly but surely fallen into decline.

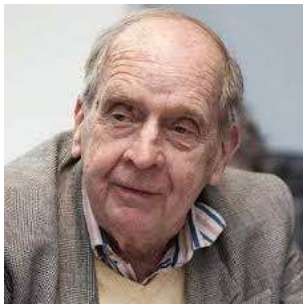
That is why we reject, on the basis of unwritten constitutional law, the legitimacy to rule by coalition covenants. These are perfidious instruments. A parliamentary majority agrees once on that coalition covenant and then Parliament can go home. The opposition is left desperately searching for holes 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.

So, praising Parliamentary Democracy as the one and only system to guard democracy is unjust. This system does not work properly anymore. It emphasizes the power of the Executive branch; it diminishes – hollows out - the power of the Legislative branch and it disregards the role and significance of Citizens within the democratic system

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 national 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 Chapters of this Toolkit have clarified that the thirteen Confederal States – each in their 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. Consequently, as a result of the lack of one leading motive for all Confederal States, an unworkable number of different governing 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 James Madison, supported by George Washington - deemed it wise to organize the 1787 Convention of Philadelphia. 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: democracy by people's representation only. So, no King.

This leads us to another concept: Representative Democracy. People 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. As explained before, that is not the case in the federal constitution.

Representative Democracy on the other hand is something else. It stipulates that no one but those elected by the people represent that people. It thus excludes hereditary Kingship in the sense of the King being the Ruler of the country. Both the House of Representatives and the President act as representatives of the people. Since Amendment 17 of 1913 (see Chapter 8) by which members of the Senate were no longer appointed by the Legislatures of the States but elected by the People of the States, the Senate also has a mandate from the people. As explained earlier, we have not adopted this in our draft Federal Constitution for the United States of Europe. We adhere to the system that, from the point of view of checks and balances, it is better to have the House of the Citizens elected by the People and the Senate by the Legislatures of the States. Incidentally, there are voices in the US calling for the reversal of this Amendment 17, adopting again the previous system.

The House of Representatives and the President stand next to each other. No subordination. Once a year – the State of the Union - the President unfolds his plans before Congress (the gathering of both Houses) and has to ask the consent of (one of the) Houses of Parliament for some of his powers, as enumerated limitatively 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. Unless Congress exercises the right of Congressional Oversight. See 10.3.

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 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 (Executive Orders, see 10.4), except for matters requiring the consent of one House.

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.

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 chapters have sufficiently explained how the classical Westphalian 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.

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. Not only from the point of view of practical decision-making but also and especially because of the disregard of fundamental cornerstones of democracy.

We will not repeat the facts and arguments for this statement, but instead will draw the 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, 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. It 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 in its original meaning. 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 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. In a two-party system like in the USA and in the UK, this inherent weakness of representative democracy is most pronounced. Hence the need to look again and again - and often in vain - for bipartisan decision-making.

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 on the History of Philosophy at the University of Groningen (the Netherlands) on April 12^{th,} 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 through a social contract) and for all political theorists after him, that a representation of the people at best could be called an elective aristocracy.

As long as aristocrats honor their noble connotation 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 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 we have 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 is meant 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."

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, the wrong people can take the democracy hostage and have it functioning favorably to group and personal interests. They hi-jack 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, we share Ankersmit's view, and also his reconciliation, that Representative Democracy as an elective aristocracy is the second-best method of decision making for the people. We 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 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. For this reason, in Chapter 11, we focus on the requirements of competence and suitability for political office, the most important office in the world.

In a nutshell:

- A presidential system does not mean that the President is the boss, but that the President is elected by the people. Next to the House of the Citizens. He is the chief executive. The functions of Head of Government and Head of State are united in one person. A presidential system guarantees the strictest separation of the trias politica. The executive responsibility is assigned to the President individually. Not collectively to a cabinet of ministers as a council bearing collective responsibility as in a parliamentary system. The cabinet does not hold lawmakers. Legislators are barred from holding an executive office and vice versa. The President does not make laws. The Houses of Congress make laws which can be vetoed by the President. But the legislature can overrule that veto if both Houses reach consensus on that.

- Parliamentary Democracy means that the parliament is in charge. Strictly speaking this is not in line with the concept of the trias politica which is based on the principle that no power can rule over one of the others. A Prime Minister is Head of the executive branch. There is a Head of State, either a King/Queen or a President. The fact that a Parliamentary Democracy can have a President as the Head of State does not mean that it is also a presidential system. Such a Head of State is usually a ceremonial, protocol function.

- Representative democracy means that the people are represented by persons elected by the people. That rules out hereditary Kingship in the sense of the King being the Ruler of the country.

10.3 Implied Powers

In the USA all three branches of government have expanded their powers over the years. They did so by interpreting their powers granted by the Constitution broadly. They assumed powers on their own authority as extensions of the literal powers in the Constitution. But these can never override the powers explicitly stated in the Constitution. Implied therefore means that it is not a question of additional powers over and above the limited and limitatively numbered powers, but of powers derived from those literal powers.

These are the Congressional Oversight of the Houses of Congress, the Executive Orders of the President, and the Judicial Review of the Supreme Court. The question arises: will the application of our federal Constitution for Europe also work in this way, i.e., with the implied powers of Congress, the President and the Judiciary mentioned below? The answer is: that is necessary for the three powers to function effectively. There are sufficient checks and balances to prevent excesses.

10.3.1 Congressional oversight

One of the primary implied powers concerns the 'Congressional Oversight'. This oversight – primarily organized by parliamentary committees[122] (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.

It is not a recent aspect of the American system. It is part of the original Constitution and an indisputable element of the aforementioned system of checks and balances. Congressional Oversight exists since the Convention of Philadelphia. James Madison describes it in Federalist Paper number 51 with the words: "subordinate distributions of power, where the constant aim is to divide and arrange the several offices in such a manner that each may be a check on the other".

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. It acts as an extremely powerful instrument of Congress to curb the power of the President.

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 to consider this parliamentary oversight as important as making laws: "Quite as important as legislation is vigilant oversight of administration."

Congressional Oversight belongs to both houses of Congress. It is the power to investigate the activities of the Executive Branch, including those of all Federal Agencies. It is seen as a natural power for the Legislature to be able to perform its duties properly. This power is thus derived from the legislature's explicit authority to allocate funds, enact laws, establish defence forces, declare war, and impeach the President and his entourage. Congress could not do any of this without being

[122] See Annex 3.

able to know exactly what the Executive branch is doing or has done: by whom, at what cost, in what way, with what result and whether everything was done within the rule of law, according to the intent of the Legislature.

The objectives of Congressional Oversight in a row:
- To evaluate implementation programmes.
- To promote the effectiveness and efficiency of activities of the executive branch.
- Detecting and preventing bad governance, waste of policy, arbitrary and arbitrary conduct, illegal or unconstitutional conduct.
- Protecting civil and constitutional rights.
- Restricting attempts by the Executive Branch to obstruct the Legislative Branch.
- Ensuring that the Executive Branch really implements what the Legislative Branch has decided
- Collecting facts, arguments, material for new legislation or to improve existing legislation.
- Telling the people that the way the Executive Branch operates is in line with what the legislature intended.

The implementation of this Congressional Oversight lies with Committees (see Annex 3). These Committees can subpoena persons, including members of the President's Cabinet.

10.3.2 Presidential Executive Orders

Another example of implied powers is the so-called Presidential Executive Orders. Although there is, strictly speaking, no legal basis in the Constitution for such orders, the President can give orders 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.

Because the President derives such powers from the intentions of powers explicitly conferred on him or her by the Constitution, Presidents tend to interpret it rather broadly. Acts of Congress can also contain articles that delegate direct or implied powers to the President. It is up to the Judicial Review of the Supreme Court to determine whether Executive Orders comply with the provisions of the Constitution or lower legislation.

The US President combines in person the functions of Head of State and Head of the Government. Only he or she is authorised to issue Executive Orders. Presidential Executive Orders remain in force until they are revoked or are judged by the Supreme Court to be unlawful or expire on the gravel of the provisions of

such an Order. It is not unusual for a new President to take office with the revocation of Executive Orders of the previous one. That is what President Joe Biden started doing immediately when he took the presidential office on 20 January 2021. In the first two weeks of his presidency, Biden issued over two dozen executive orders, more than any other president[123]. 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. Due to the fact that even the Supreme Court is entitled to declare a Presidential Executive Order unconstitutional this system optimizes on the one hand the effectiveness of the executive branch, while on the other hand sufficiently guaranteeing the prevention of an arbitrary use of discretionary powers. One of the many examples of the checks and balances.

10.3.3 Judicial Review

Article VI of our federal Constitution 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. An important aspect is the judge's power to review laws and treaties against the Constitution and constitutionally agreed treaties: the Judicial Review. Both federal and state courts are competent to review the constitutionality, or lack thereof, of legislation through a process of judicial interpretation. A court may declare laws and decisions invalid if it finds them to be inconsistent with higher law. So, it is one of the many examples of checks and balances to keep the three powers of the state separate.

10.4 Executive Departments and Federal Agencies

To conclude the supporting material, we add information on the Executive Departments and Federal Agencies under the direct supervision of the President of the United States. It is not our intention to copy these into the system we have proposed for the United States of Europe, but to learn from them. In order to avoid an extensive treatise, we refer to both subjects by means of a link:

- Executive Departments: https://guides.lib.uw.edu/research/federal/departments_agencies.
- Federal Agencies: https://www.usa.gov/agencies.

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[123] For more information on the history of Executive Orders see this 15 February 2021 video from the National Constitution Center: https://constitutioncenter.org/interactive-constitution/town-hall-video/jeffrey-rosen-and-ali-velshi-on-president-bidens-executive-orders-and-history-of-presidential-power.

11. THE POLITICAL OFFICE: REQUIREMENTS FOR COMPETENCE AND SUITABILITY, THE TASK OF POLITICAL PARTIES

11.1 Introduction

This Chapter is a further clarification of the rules of Article II, Section 2, Clause 2 and of Section 3, Clause 2: the House and the Senate shall make further rules concerning a check on the ability and suitability of candidates for the House of Citizens and the Senate.

11.2 The 'political office' versus 'politics'

The political office is the most important office in the world. Where political office is absent, societies fall apart. However, political office is not the same as 'politics'. 'Politics' is the way in which that political office is exercised on a daily basis. However, often not on the basis of a deep understanding of the requirements needed to fulfil the political office. 'Politics' is therefore an important, if not the most important, cause of many social problems. Not the solution.

This is especially the case when politicians are allowed to steer a society hierarchically with treaties, as is the case with the intergovernmental EU system. Those politicians don't know the difference between an undemocratic intergovernmental treaty and a democratic federal constitution. The lack of knowledge is amoral, the result is immoral[124].

These words require substantiation. For that, we will first let Roger Kotila speak[125].

11.3 A closer look at psychological factors in UN charter review and the Earth Constitution

This is a passage on the treaty-based, intergovernmental operating system of the United Nations, seen through the lens of Roger Kotila. The title of this paragraph is the title of Kotila's essay for a panel presentation at the Academic Council on the UN System annual conference (July 2020). As a psychologist Kotila focuses on errors of the treaty-system of the UN with concepts from psychology. Central is his view that the UN system of treaties should be replaced by a federal Earth Constitution. He supports that position with the metaphor that Bully

[124] See Leo Klinkers, 'The perverse impact of working with treaties'. In: Europe Today Magazine, 16 July 2020: The perverse impact of operating with treaties.

[125] President of the Democratic World Federalists (DWF), Vice President of the World Constitution & Parliament Association and Board Member of the Center for UN Constitutional Research.

Nations all over the world behave in exactly the same way as gangs in a prison: a behavior stemming from paranoia. He associates this with the role of sociopathic and psychopathic world leaders who should actually be locked up in prisons. However, the UN-Charter provides the five veto-nations in the Security Council (and their allies and proxies) with a stay-out-of-jail free pass, even when a leader has committed horrendous world crimes.

Still, nothing changes as far as these veto-countries is concerned. There will be no change in the sense of a 'New UN' based on a federal Earth Constitution rather than the system of treaties because the five veto-countries are led by fear as the psychological resistance to change. Fear that the other UN-countries will seize the undemocratic UN-system to curb the unlimited power of the five veto-countries. However, Kotila thinks that the time is ripe for those countries to get rid of that system. Their feelings of humiliation and resentment as second class citizens within the UN are a powerful motivation for change, as is their need for respect and dignity. They will understand – according to Kotila – that they only get that in the context of a Federal World Constitution.

Kotila mocks the Security Council's image as 'responsible for peace and security' by observing that the five veto-countries actually operate as a criminal cabal in a war business. They are the leading arms suppliers in the world. That is hidden behind psychological denial in the sense of 'see no evil, hear no evil, and keep your mouth shut'. Besides, the UN-Charter puts Bully Nations above the law, "allowed to threaten, blackmail, overthrow, or invade weaker countries without consequence to the leaders who are responsible for these international crimes. The Earth Constitution brings us a global system with genuine 'Law and Order', the only practical way to stop sociopaths and psychopaths."

As pointed out by James Madison and Alexander Hamilton, and as the administrative practice in the European Union regularly shows, Kotila notes that "nations, particularly the stronger ones, cannot be prevented from violating a treaty if they believe it is in their self-interest to do so – whether or not it is in the world public interest." To continue with: "We know from history that **treaties are like building on quicksand**. The reason for this is both political and psychological. Politically nations abandon treaties with shifting perceptions of self-interest. But the psychological factor is ultimately more powerful in a global system relying on treaties" by clinging to national sovereignty with institutional paranoia, added to greed. He characterizes institutional paranoia as a byproduct of the global system of nation states embodied in the UN Charter. Without an unmasking of that nation-state system there will never be disarmament and world peace: "When nations sign treaties, which relate to global issues, it gives us a false sense of security."

Kotila is clear about the structural weakness of working with treaties. History shows that they are always broken or ignored. Out of self-interest, private interests, or religious interests. The psychological dynamics of paranoia and greed – the motives of prison gangs – are based on the fear that another party is looking for advantages. Because not to be attacked or deprived of wealth themselves, nation states – just like those gangs – will always want to arm themselves. It is an automatic reaction within the system of nation-state sovereignty – without cross-border governance that can prevent or resolve conflicts. It is governed by the mentality of 'the winner takes all' and the 'survival of the fittest'.

There is no escaping this hard psychological fact. Institutional paranoia and greed will never disappear, no matter how many treaties states will sign with a focus on their own national interests. Only within a federal state form in which states share their sovereignty with a federal body, in which inspections can take place at anytime, anywhere, can paranoia and greed be curbed. The rule of law then applies to everyone:

> "This rule of law is necessary because whereas people with a normal, healthy conscience will do the right thing without threat of punishment, those leaders of nations who are sociopaths or psychopaths must be restrained by knowing they will face punishment if they commit crimes. It is wishful thinking to believe that treaties or agreements alone can result in permanent full disarmament of weapons of mass destruction, prevent wars, or eliminate predatory economic behaviors. The psychiatric dynamic of paranoia (and greed), just like with prison gangs, will eventually sabotage any treaty-based agreements between sovereign nations."

Pay particular attention to Kotila's emphasis on the danger of nation-state anarchy as the most obvious byproduct of operating with treaties. The greater the territorial scale of a treaty to unite nations as a union, the faster paranoia and greed will strike and the treaty will be ignored out of self-interest, resulting in new wars as a product of nation-state anarchy.

The fact that the vast majority of EU-leaders do not know this – or prefer to ignore it – is simply a product of politicians:
(a) Not knowing the perverse effects of working with treaties.
(b) Not knowing the difference between an undemocratic intergovernmental treaty and a democratic federal constitution.
(c) So, not knowing the foundations of the political office.

The lack of knowledge is amoral, the result is immoral. Amoral means: without an idea or conception of what is good or bad. Immoral means: something that is contrary to the good. Not knowing what is right or wrong started with Robert

Schuman making the unforgivable mistake of advocating the creation of a federal Europe by means of a treaty. Lack of knowledge of the destructive nature of intergovernmental treaties versus the positive nature of federal constitutions puts EU-politicians in the position of amoral behaviour: they do not know the difference between good or bad. And because the strongest politicians are led by paranoia (fear that they will be attacked) and greed (the sublimation of wealth and power), the result of that behavior is immoral: contrary to good.

11.4 The Political Office in the Light of the Seven Capital Sins and the Seven Virtues

During his reign of 590-604 Pope Gregory established the Seven Deadly Sins. It had no small effect in art. All seven occur in Dante Alighieri's La Divina Comedia (±1300). At the end of the 15th century, Hieronymus Bosch dedicated a painting to them in the form of a circle with seven segments. They read as follows:

- Superbia: pride.
- Avaritia: greed.
- Luxuria: lust.
- Invidia: jealousy.
- Gula: gluttony.
- Ira: rage.
- Acedia: laziness.

The counterparts are the seven virtues. They are older than the seven capital sins, already known in ancient Greece, and written down as part of Catholic doctrine by Pope Ambrose in the fourth century. At least the first four. The last three - faith, hope and love - are by Thomas Aquinas:

- Prudentia: wisdom.
- Justice: righteousness.
- Temperance: self-control.
- Fortitudo: courage.
- Fides: faith.
- Spes: hope.
- Caritas: charity.

These have also played a role in art and culture. Boccacio included the seven virtues in his Decamerone. Pieter Bruegel made a series of paintings of them.

The first four virtues take us back to the domain of political philosophy. Aristotle described them in his ‘Ethica Nicomachea’ and Plato in his ‘Politeia’. Here is the combination of Ethics and Politics, represented by four virtues which together express only one thing: a sense of morality, in the sense of knowing what is good. The opposite of amorality, not knowing what is right or wrong.

Applied to the field of building a federal Europe, which since 1800 has always failed - partly due to ignorance (amoral), partly due to deliberate blocking (immoral) - the question arises: to what should we pay most attention? To combatting the seven capital sins, including the greed that Roger Kotila despised, or to promoting the first four virtues? For scholars, the answer to this question should be simple: the primary focus should be on fighting the capital sins. How? By proving that the lack of knowledge of leading politicians of the perverse negative effects of working with treaties damages the lives and quality of life of their citizens. That is rule 1 of scientific methodology: refute the correctness of erroneous positions with facts and arguments. The effect of that evidence will automatically be more Prudentia, Justice, Temperantia and Fortitudo.

11.5 Foundations of political office

On 11 and 12 April 1989, the Tuschinski theatre in Amsterdam again hosted the Global Economic Panel led by the then President of Philips, Prof. Dr. Wisse Dekker. Once again, the Panel consisted of famous political figures. Among them were Helmut Kissinger, known as Minister of Foreign Affairs under President Nixon, and Helmut Schmidt, former Chancellor of Germany.

At one point, Kissinger asked Schmidt, "Helmut, what do you think are the three most important problems the world will face in the next three-four decades?" Without any hesitation, Schmidt replied, "Global corruption and fraud, global warming of the climate, and refugee and migration problems.

We are now 31 years on. In a world that has indeed developed in this way.

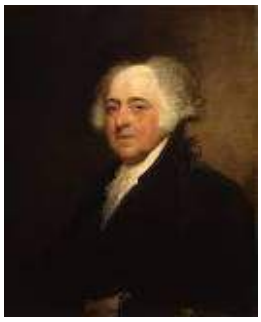
We usually use 'corruption' in the sense of 'receiving valuable things in exchange for granting favours'. However, that interpretation is too narrow. It is merely a species of the genus 'corrumpere'. That is Latin for 'spoil'. Whether it is food that is no longer edible or an electoral system whose outcome is a foregone conclusion because a strong man can buy the majority of votes. In the sense of 'spoil', it all comes under the term 'corrupt'.

With 'worldwide corruption and fraud' Helmut Schmidt was also referring to a growing deterioration in the quality of political systems. The result is unmanageable climate, migration and refugee problems, among other things.

The generally increasing corruption and fraud also manifests itself in a steady deterioration of the quality of people who think they can hold political office. A small minority can indeed do so. There are certainly politicians of exceptional quality. Deeply aware of the significance of political office. But it is fair to say that the vast majority of politicians should not have been given political office.

Their unsuitability has to do with the fact that people need a kind of prove to be up to a job, but do not need a degree to perform unskilled labour and to obtain a political office. The inevitable objection is obvious. Most politicians certainly do have a diploma that goes beyond a driving licence. But the absence of the required competence and aptitude requirements means that they would not be allowed to hold political office. What we have here is a structural defect of political systems: candidates for political office are selected on the basis of all sorts of criteria, but they are not tested for knowledge and understanding of the fundamentals of political office. This is a necessary requirement to be allowed to serve the interests of a nation.

In the words of 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."



This notion is reinforced by John Quincy Adams, also one of the founding fathers 1787: "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."

11.6 A closer look at the foundations of the political office

Every profession requires relevant competence (knowledge and experience) and suitability (mentality and morality). These two criteria determine whether one is qualified to exercise a given profession. This should apply unreservedly and compelling to persons holding political office, being the most important office in the world.

This seems to run counter to the constitutional provision - probably applicable in every Member State - that every resident has an equal right to become a member of a generally representative body by means of elections. However, qualification requirements do not deprive anyone of the right to prove that they have been met; no one is excluded beforehand. Moreover, political parties now also apply

selection mechanisms when deciding whether or not to put someone on a list of candidates. The problem, however, is that selection criteria are insufficiently tailored to the notions of competence and suitability for the political office or that political parties interpret them incorrectly.

11.6.1 Foundation of competence

The requirement for competence in the fundamentals of political office requires one to possess deep-seated knowledge such as:

(a) To know how the concept of popular sovereignty developed from Aristotle through all ages, Popular Sovereignty in the sense of "All sovereignty - the highest authority - belongs to the people"

(b) To know how the writings of political philosophers - in addition to renowned historical popular uprisings - formed the basis for various forms of organising popular representation while safeguarding the sovereignty of the people.

(c) To know that the protection of the people's sovereignty must be ensured by following indelible principles such as:
- Ex factis ius oritor: it is facts that must lead to justice.
- Ex iniuria ius non oritor: from injustice[126] there is no law.
- Pacta servanda sunt: treaties must be respected.
- The rule of law: no one is above the law.
- Trias politica: the separation of the legislative, executive, and judicial branches.
- Checks and balances: the constitutional instruments to guarantee the separation of powers.
- Actus contrarius principle: the procedure to rectify what has gone wrong in the past.
- Habeas corpus: the prohibition of illegal detention and the right to a fair trial.
- Ius cogens: mandatory right.
- Ius post bellum: right after a war.
- The right to self-determination is an inalienable right.

(d) To know the origin and meaning of human rights treaties and to fight tirelessly for their application.

[126] To quote Thomas Jefferson: "When injustice becomes law, resistance becomes duty."

(e) To know how political parties based on religious principles can function within the principle of separation of church and state[127].

(f) To know at what point of regulation law as an instrument for achieving political goals (the so-called instrumental view of law, driven by the fads of the day) must give way to the independent value of written law.

(g) To know the fundamental difference between a centralized and a decentralized unitary state.

(h) To know the fundamental difference between federal state building and intergovernmental administrative cooperation.

(i) To know the fundamental difference between a parliamentary and a presidential system.

(j) To know the fundamental difference between an appointed and an elected Prime Minister, either from and by Parliament or from and by the people.

(k) To know what the fundamental difference is between monism and dualism and that working with a coalition agreement as a catalyst for monism destroys the required dualism between parliament and government.

(l) To know that for countries that have to cooperate and live together, only a federal state is the appropriate organisational form, with consequences for the correct application of constitutional and institutional standards, with the aim of entrusting to a federal body interests that individual states cannot manage independently, while preserving the sovereignty of the member states and their citizens.

(m)To know why intergovernmental forms of government such as the United Nations and the European Union with their limited political life cycle and

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[127] We are not discussing whether a political party can operate at all on the basis of religious doctrines. But in an increasingly secular Europe, this question will have to be addressed - again - as a matter of principle. A quote from Thomas Jefferson, author of the Declaration of Independence 1776, may be helpful here: "I have examined all the known superstitions of the world, and I do not find in our particular superstition of Christianity one redeeming feature. They are all alike founded on fables and mythology. Millions of innocent men women and children since the introduction of Christianity, have been burnt, tortured, fined, and imprisoned. What has been the effect of this coercion? To make one half the world fools and the other half hypocrites; to support roguery and error all over the earth."

fundamental systemic failures cause irreparable damage to principles of sovereignty if not replaced in a timely manner by a federal form of government.

(n) To know how to apply the architecture of breaking the status quo, the architecture of goal setting, the architecture of goal attainment and the summary architecture of the process of circular policy making; circular in the sense of avoiding policy traps, the loss of policy energy and stepping into the trap of solution thinking.

(o) To know how to design enforceable law without the pathological side effects of juridification and bureaucratization of governance.

(p) To know which elements from sciences such as law, philosophy, political science, sociology, organisation theory, communication theory, cybernetics, systems theory, causality theory, formal logic, psychoanalysis, and social psychology should guarantee good governance.

(q) To know that individuals, but public organisations as such, have no conscience and no learning capacity and that therefore increasing the quality of public organisations must be guided by investment in the individual learning capacity and conscience of the political and civil servants.

(r) To knowing that organs of government that manoeuvre individuals and groups of citizens into hopeless powerlessness are exercising a form of terror.

11.6.2 Foundation of suitability

Now the question of suitability. This concerns mentality and morality. The main requirements are:

(a) To understand and feel that the exercise of political office in a party context is always under pressure from the tendency towards oligarchization, political monopolisation and thus corruption in the sense of spoiling.

(b) To understand and to feel that holding and exercising political powers is incompatible with the acceptance of immunity and dual mandates.

(c) To understand and to feel that having powers in relation to society requires accountability for the exercise of these powers; and that for this purpose it is not possible to work with a treaty, but only with a constitution.

(d) To understand and feel that the right to hold political office requires the courage to use serving the people to do good and fight evil. Doing good in the

sense of restlessly protecting inalienable values of humanity. And fight against the ever-dormant (pre-)fascism that can threaten any society.

(e) To understand and feel that the (mis)conduct of political office holders determines the (mis)conduct of society. The example function is everything. Deviating behaviour at the base of society always results in deviating behaviour at the top of society.

(f) To understand and feel that acting respectfully, valuing everyone, showing empathy, and seeking commonality and connection creates a sense of security and trust in government.

(g) To understand and feel that acting morally means acting in the light of Immanuel Kant's Categorical Imperative.

(h) To understand and feel that sincerity in speech and truthful action takes place in the light of Jürgen Habermas' Theory of Communicative Action.

(i) To understand and feel that just action must take place in the light of John Rawls' Theory of Justice.

(j) To understand and feel that acting wisely must be in accordance with Aristotle's Virtue Ethics.

(k) To understand and appreciate that courageous action - and the courage to act - is required in the face of resistance from destructive forces.

(l) To understand and appreciate that talking to and about citizens is inferior to deliberating with citizens.

(m)To understand and appreciate that where authority disappears, a government is left with only power, which is not used in the service of the people.

(n) To understand and to feel that having the above-mentioned knowledge requirements is not without obligation: noblesse oblige.

If, in addition to these competence and suitability requirements, someone also knows something about public health, defence, agriculture, livestock and fisheries, macroeconomics, housing, infrastructure, climate change or other policy sectors, then that is a bonus, but not a necessity. Sometimes even annoying because civil servants and advisers are better at it than politicians.

11.7 Has the lowest point been reached?

No, we have not yet reached the nadir of the worldwide decline in the quality of the political office. In more and more places in the world, populist nationalism bordering on fascism is on the rise. With a threatening return to post-Westphalian nation-state anarchy. Its decay - manifest in conflicts and wars with their various forms of violence and violation of human rights - appears to be stronger than peaceful demonstrations against political misconduct. This process of creeping decay seems unstoppable for the time being.

If we look at this development linearly, the next phase of Helmut Schmidt's prediction of increasing corruption and fraud is the advent of violent uprisings by peoples who see no other way out than to choose variants of the English Magna Carta of 1215, the Dutch Placcard of Abandonment of 1581, and the American Declaration of Independence of 1776.

In 2023, it will be a hundred years since Hitler carried out his first - albeit unsuccessful - putsch. To gain absolute power ten years later in 1933. Who knows of facts and arguments strong enough to assume that this cannot happen again? Though, we can do everything we can to prevent it, including restoring to the political office the dignity and authority it deserves. And that is part of the responsibility of political parties.

11.8 The responsibility of transnational political parties

Transnational political parties are responsible for the quality of the politicians who take office in the federal House of the Citizens of Europe. They have to select the best people for the most important political office in Europe. And not only select, but also take responsibility for their competence and suitability.

We are encountering a curious phenomenon here. There is a gap in the checks and balances. Traditionally, the door to membership of a Parliament is wide open. People who aspire to become representatives of the people register with a political party; the party selects, on the basis of internal procedures and preferences, whom to put on their party's electoral list, and if that candidate is then elected by the people, membership of the national assembly is a fact. In the procedure preceding the election, the people play no role, while they have every interest in being represented by the best. The people want good governance. Political parties want power. If political parties promote the wrong candidates to the representation of the people, the people are powerless.

Therefore, it is appropriate to supplement the system of checks and balances with an extra element: giving the citizens a role in the selection of candidates for representation of the people and also a role during the performance of candidates

in the representation of the people. In the US federal system, Ministers are tested in two ways. After a nomination by the President, they are first evaluated by the Senate on their capacities for holding the office of the President's Cabinet. If they pass that test but are involved in matters that Congress wants to investigate further during their tenure, all the Standing Committees of Congress have the power to subpoena and question them.

A similar formula should apply to the recruitment, selection and functioning of European candidates for membership of the House of the Citizens. In other words, organise the influence of the people before a representative of the people steps through the door of Congress, but also during his/her functioning once he/she is inside. This formula could look like this[128]:

(a) The transnational political parties jointly establish a non-partisan training Institute that provides a curriculum as referred to in 11.6: the requirements of competence and suitability for holding the most important political office in society. It is an offer to the people of Europe. However, attending such training is not compulsory. Potential candidates can also acquire that high level of ability and suitability to hold political office by other means. Nor is any prior academic training required. One can learn Aristotle's virtue ethics even without a university degree. The training shall be organised according to the structure of open universities and offered primarily online.

(b) The non-partisan board of that institute shall establish a Committee of non-partisan Citizens in each Member State one year before the election of a new House of the Citizens. With a Committee in each Member State, it is relatively easy to investigate the candidacy of approximately six hundred members for the representation of the people. Such a Committee consists of fifteen people. The composition is as follows: as many women as men; five of the fifteen members are scientists in the field of political philosophy, constitutional law, behavioural sciences, systems theory, and organisational science; five members come from the world of the arts; the other five are Citizens with a considerable life experience, wise people so to speak. Together they represent the 'Wisdom of Crowds'[129]. By choosing scientists (check on competence), artists (check on suitability) and wise persons (additional check on suitability), we are following the quote by John Quincy Adams mentioned above. The non-partisan board of that Institute will compose the Committee on its own authority.

[128] This also might deserve attention in the USA. The period of Trump's presidency has shown that Congress has members whose constitutional knowledge and mental attitude raise question marks.
[129] James Surowiecki, The Wisdom of Crowds, 2004.

(c) The committees examine the credentials of candidates from all parties in that Member State and hear them personally. They do not pass judgment on the political values of candidates. They only check whether candidates can be considered sufficiently competent and suitable as members of the House of the Citizens. Those who pass the examination receive the 'nihil obstat', the sign of 'no objection', from the committee. This is a public document. Given the ever-present danger of creeping autocratization, an examination of the mental capacities of the candidates is an obligatory part of the credentials. If a candidate does not obtain a 'nihil obstat', it is up to the political parties to decide whether to honour a committee's 'nihil obstat' and withdraw the candidate, or still keep him/her on the electoral list. If the party retains the candidate, it is up to the voter to give his/her vote or not to that candidate.

(d) After the elections, the non-partisan Citizens' Committees continue to exist until the next elections. During the parliamentary term, they monitor the behaviour - inside and outside Congress - of the people's representatives. If committees identify behaviour that raises questions in the context of the competence and suitability requirements, they can subpoena the person concerned and hear him or her under oath. If an investigation shows that the conduct is indeed in breach of the competence and suitability requirements, the committee can state this and make it public. The committee does not have the power to remove the member of the House of the Citizens concerned from political office. After all, he or she is elected by the people. However, this representative of the people will have to appear before the committee again at the next elections - at least if the party puts him/her on the list again - and give account; there is a good chance that a new 'nihil obstat' will not be issued. And, of course, that is also a strong signal to the people not to give preference to that candidate any longer.

Special note:
The same procedure applies to candidates for the office of Senator. They will be appointed by the legislatures of the Member States, but it is the political parties in the parliament of each Member State that put forward candidates. What is written as the procedure for carrying out a check on the competence and suitability of a candidate for the House of the Citizens applies mutatis mutandis to a check on the competence and suitability of candidates for the office of Senator to be carried out by the parliaments of Member States.

We understand that this is a radical addition to the system of checks and balances. But Europe is facing the biggest task in its history. After the expected systemic crisis, Europe must build a federal state that may no longer show any traces of intergovernmental DNA. Moreover, it is a matter of utmost importance to provide

the federal constitutional and institutional system with optimal defence mechanisms against undemocratic rule. Throwing away what is structurally wrong with the claimed democracy and bringing in what is structurally right for true democracy you can only do once, in the beginning. In the terminology of the digital age: the representation of the people of a federal Europe is not an update of the existing system that has no gate-keeping to block stupid and immoral candidates for the House, but an upgrade, a total, breathtaking renewal.

Do you want common European interests to be represented at an excellent level? Do you want the House of the Citizens to be committed to helping European Citizens to be happy, to care about the planet, peace, climate, health, employment, immigration, the economy, security, connection, and solidarity? If so, then no one in Europe has the right to shrug their shoulders at the obvious demand that Europe's parliamentary representatives should consist of people who have been trained at the highest level for Europe's political office. Do you see it differently? Go flying in an aero plane with pilots who have only been trained to bake bread.

This addition to the system of checks and balances comes as close as possible to Aristotle's concept of democracy. Not in the sense of all citizens making all decisions together in the square, but in the sense of the **structural involvement of Citizens** before and during sessions of the House of the Citizens; as a watchdog against deviant behaviour by those who represent them.

Following Rousseau and Ankersmit, we must accept that this representation of the European people is also an 'elective aristocracy' (see Chapter 10). Not the former aristocracy of noblemen or of wealthy people who paid taxes and could thus acquire political office. What is meant here is an 'aristocracy' of elected people who, according to the political parties to which they belong, may justifiably represent the people.

Of course, we do not close our eyes to the warning that the exercise of political office is always under pressure from oligarchization. And thus, to the formation of political monopolies. These always lead to corruption. We trust that this addition to the checks and balances of our federal Constitution is strong enough to limit that inevitable urge to oligarchize to the utmost.

To emphasize the seriousness of this issue, here are some figures that speak for themselves. Regular academic surveys show that in the Netherlands about 2.5% of the electorate is a member of a political party. That is about 300,000 people of the more than seventeen million inhabitants. These 300,000 people share 80% of the most important positions in the political, administrative, and civil service bodies, in

the permanent and ad hoc advisory committees, in the business community and in science: 'birds of a feather flock together'. The quality of political office is noticeably declining, non-partisan competent people are out of the game and do not even consider taking up political office. It will not be much different in other European countries.

It is up to the Citizens' Convention to judge whether this addition to the system of checks and balances – included in Article II, Section 2, Clause 2 and Section 3, Clause 2 - should have a place in the federal Constitution or should be deleted. In this context, the Convention can also pronounce itself on the question of how this system should be financed.

Annex 4 contains the text for the arrangement that the House of Citizens can make. This also serves as an example for the Senate, which should devise a similar arrangement for checking the competence and suitability of candidates for the office of Senator.

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12. BIBLIOGRAPHY

This Toolkit is partly based on the literature listed below. Titles of publications in the Dutch language have not been translated.

***

Alen, A., Beaufays, J. & d' Alcantara, G., Federalisme: staatkundig, politiek en economisch, Maklu, 1994.

Allen, Danielle, Our Declaration, a Reading of the Declaration of Independence in Defense of Quality, Liveright Publishing Company, 2014.

Althusius, Johannes, Politica methodice digesta, atque exemplis sacris et profanis illustrata (= Politics methodically dissected and illuminated with biblical and worldly examples), 1603. English translation: http://www.constitution.org/alth/alth.htm.

Anderson, L.F., Das Logische, seine Gesetze und Kategorien, Felix Meiner Verlag, 1929.

Ankersmit, Frank, De Verenigde Staten van Europa in: De Verenigde Staten van Europa, Jaarboek Parlementaire geschiedenis 2012, Boom 2012.

Ankersmit, Frank, De representatieve democratie is een electieve aristocratie, Afscheidsrede Universiteit van Grondingen, april 2010.

Ankersmit, F. & Klinkers, L.E.M., De Reformatie van de Staat, parlement en regering, Deelstudie bij het Eindrapport van de Nationale Conventie, Hart voor de publieke zaak, september 2006.

Ankersmit Frank, De Sublieme Historische Ervaring, Historische Uitgeverij, 2007.

Aubert, J.-F., Müller J. P. & Thürer D. (eds.), Verfassungsrecht der Schweiz – Droit constitutionnel suisse, Schulthess Juris- tische Medien, 2001.

Barroso, José Manuel, State of the Union 2012, Brussel 2012.

Berden, Koen en Marcel Canoy, EU kikkert op van vrijhandel met de VS, in: NRC Handelsblad 16 maart 2013.

Berg, Caspar van den, Transforming Europe. The reshaping of national bureaucracies in a system of multi-level governance, Leiden University Press 2011.

Billière Sir Peter de la, Looking for Trouble, HarperCollins Publishers, 1995.

Bittner, Jochen, So nicht Europa! Die drei grossen Fehler der EU, DTV, 2010.

Blair T. & Cunningham J., Modernising Government, Whitehall, 1999.

Blick, Andrew, Federalism for the United Kingdom: an answer that raises questions, in: Federal Trust 3 March 2021.

Blindenbacher, R. & Ostien, A. (eds.), Dialogues on constitutional Origins, Structure and Change in federal Countries, Booklet Series, volume 1, MacGill-Queen's University Press, 2005.

Blindenbacher, R. & Ostien, A. (eds.), Dialogues on Distribution of Powers and Responsibilities in federal Countries, Booklet Series, volume 2, MacGill-Queen's University Press, 2005.

Bloch, E., das Princip Hoffnung, Volumes I, II, III, Suhrkampf Verlag 1959.

Bóka, Éva, Rethinking the role of the federalist ideas in the construction of Europe: https://www.eva-boka.name/files/pdf/RethinkingTheRole.pdf.

Brill, Paul, 1600 Pennsylvania Avenue, Balans, 2012.

Burgess, Michael, Federalism and Federation in Western Europe, Croom Helm, 1986.

Casarotto, Mauro, 'The Trump Case: seven lessons it taught us and a final question for Europe, in: Europe Today Magazine of 20 Januari 2021: https://www.europe-today.eu/2021/01/20/the-trump-case-seven-lessons-it-taught-us-and-a-final-question-for-europe/.

Cauwelaert, Rik van, De Notionele Unie, editoriaal in: weekblad Knack, 1 augustus 2012.

Cohn-Bendit, D. & Verhofstadt G., Voor Europa, De Bezige Bij, 2012.

Crozier, M. & Friedberg, E., L'acteur et le Système, Editions du Seuil, 1977.

Darwin, John, After Tamerlane, The Rise & Fall of Global Empires, 1400-2000, Penguin, 2008.

Davidson, James Dale & Rees-Mogg, Lord William, The Sovereign Individual, Touchstone, 1999.

Descartes, René, Discours de la Methode,1637.

De Nederlandse Bank (The Netherlands Bank), Jaarverslag (Annual Report) 2012, Paragraph 1.5.

Delva, T., Ryckbost, I., Sterckx, D., Van Bossuyt, A. & Vermeersch, A., Zo werkt Europa, UGA & Die Keure, 2010.

Deschouwer, Kris, De consequenties van "multi level governance", in: Res Publica, 2001.

Devore, Chuck, The Texas Model: Prosperity in the Lone Star and Lessons for America, Texas Public Policy Foundation 2012.

Dickshit, R.D., The geography of federalism. An inquiery into origins and stability.

Draft Treaty Establishing the European Union, Official Journal of the European Communities, No. C 77/33, 14 February 1984.

Duff, Andrew, On Governing Europe, Policy Network and ALDE, 2012.

Elazar, Daniel J., Exploring Federalism, Ed. University of Alabama, 1987.

Etzioni Amitai, The Active Society, A Theory of Societal and Political Processes, The Free Press, 1968.

European Commission, European governance, A White Paper, Brussels, 25 July 2001.

European Union Institute for Security Studies ((EUISS), 'Citizens in an Interconnected and Polycentric World', 'Global Trends 2030', European Strategy and Policy Analysis System (ESPAS), April 2012.

Falter, Rolf, België - een geschiedenis zonder land, De Bezige Bij, 2012.

Freyer James & Sacerdote Bruce, 'The US may show the EU the way forward on fiscal integration', LSE, August 26th, 2013.

Friedman Gerald, 'An American Model for Europe? Tax Policy and Federalism in the United States', Open Edition, Vol. XIII-No 2, 2015.

Friedrich, Carl, Trends of Federalism in Theory and Practice, Praeger, 1968.

Giddens, Anthony, Europe in the Global Age, Polity Press, 2007.

Gilhuis, Pieter, Het Referendum - een rechtsvergelijkende studie, Samsom Uitgeverij, 1981.

Giugliano Ferdinando, What the Eurozone Can Learn From the US, Bloomberg Opinion, 16 February 2018.

Gladwell, Malcolm, The Tipping Point, How Little Things Can Make a Big Difference, Little, Brown, and Company, 2000.

Gladwell, Malcolm, David and Goliath, Underdogs, Misfits, and the Art of Battling Giants, Little, Brown, and Company, 2013.

Glucksmann, André, Europa weet niet meer waarom het bestaat, in: Knack, 20 augustus 2012.

Griekemans, David, Geopolitieke Kanttekeningen 2011-2018, en daarna. Een wereld in volle geopolitieke transitie, Gompel & Svacina, 2018.

Griffiths, Ann L. (ed.), Handbook of federal Countries, Forum of Federations, McGill-Queen's University Press, 2002.

Habermas, Jürgen, Zur Verfassung Europas - ein Essay, Suhrkamp Verlag Berlin, 2011.

Habermas Jürgen, The crisis of the European Union. A Response. 2013.

Hamilton A., Jay J. & Madison J., The Federalist Papers, New American Library, 1789.

Handvest van de Grondrechten van de Europese Unie. Hertenstein Programma, september 1946.

Hansen, Phillip, Reviewed Work: *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism* by Thomas O. Hueglin, Canadian Journal of Political Science, Vol. 34, No. 3 (Sep., 2001), pp. 668-670 (3 pages).

Harari, Yuval Noah, Sapiens, Thomas Rap, 2017.

Hayek, F.A., Law Legislation and Liberty, Volumes I, II, III, Routledge & Kegan Paul, 1973.

Henning Randall & Kessler Martin, Lessons for Europe's fiscal union from US federalism', Vox EU, CEPR, 25 January 2012. And: 'Fiscal Federalism: US History for Architects of Europe's Fiscal Union, Peterson Institute for International Economics, January 2012.

Hesse, J. & Wright, V., Federalizing Europe? The Costs, Bene- fits and Preconditions of Federal Political Systems, Oxford University Press Inc., 1996.

Hoeksma, Jaap, The European Union; from organisation 'sui generis' to democratic regional organization, in: Federal Trust, 26 February 2021.

Hueglin, Thomas, O, Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism, Wilfried Laurier University Press, 1999.

Hughes, Kirsty, England's Scotland Panic-What is to be done?, in: Federal Trust, 25 January 2021.

Hughes, Kirsty, The UK's European and Constitutional Challenges Collide, in: Federal Trust, 26 February 2021.

Hugo, Ludolph, De statu regorum Germania, 1661.

Huyse, Luc, Over Politiek, Van Halewyck, 2003.

Janse de Jonge, Eric, Amerikaans Staatsrecht, Wolf Legal Publishers, 2012.

Kaplan, Robert, Moesson, De Indische Oceaan en de toekomstige wereldmachten, Het Spectrum, 2011.

Kaplan, Robert D., De wraak van de Geografie, Wat de wereldkaart ons voorspelt over komende conflicten en het gevecht tegen het onvermijdelijke, Het Spectrum, 2012.

Katz D. & Kahn R.L., The Social Psychology of Organizations, New York, 1966.

Kavalski, E. & Zolkos, M. (ed.), Defunct Federalisms, Critical Perspectives on Federal Failure, Serie Federalism Studies, Ashgate, 2008.

Kennes, W. & Rochtus, D, Samenwerking binnen de Lage Landen: een pleidooi, in: Internationale Spectator, Mei 2011, Jaargang 65, nr. 5, p. 264 e.v.

Ketcham, Ralph, The Anti-Federalist Papers and the Constitutional Convention Debates, Signet Classic, 2003.

Kets de Vries, Manfred F.R., Leiderschap Ontraadseld, SDU, 2008.

Kets de Vries, Manfred F.R., Leiders, Narren en Bedriegers, Scriptum 2003.

Kets de Vries, Manfred F.R. & Danny Miller, The Neurotic Organisation, EAN,1984.

Kiljunen, Kimmo, The European Constitution in the Making, Centre for European Policy Studies (CEPS), 2004.

King, Preston, Federalism and Federation, Cass Ilford, 1999.

Kissinger, Henry, Diplomacy, Simon & Schuster Paperbacks, 1994.

Klijn, Hugo, We the Peoples. Europa en de Amerikaanse Constitutie. Paper op persoonlijke titel n.a.v. een verblijf aan Harvard University in het kader van een opleiding Master of Public Administration aan de Nederlandse School voor Openbaar Bestuur in Den Haag, november 2012.

Klinkers, Leo, Beleid begint bij de samenleving. Een zoektocht naar de menselijke maat, Lemma, 2002.

Klinkers, Leo en Tombeur, Herbert, European Federalist Papers, 2012-2013: https://www.faef.eu/the-european-federalist-papers/

Klinkers, Leo, The perverse impact of working with treaties. In: Europe Today Magazine, 16 July 2020: The perverse impact of operating with treaties.

Klinkers, Leo, Parlement en regering, rijp voor een nieuwe politieke levenscyclus?, Deelstudie bij het Eindrapport van de Nationale Conventie, Hart voor de publieke zaak, september 2006.

Klinkers, Leo, Is the EU's 750 Billion Recovery Fund a 'Hamiltonian moment'? in: Europe Today Magazine 1 June 2020.

Klinkers Leo & Casarotto Mauro What the Trump experience demonstrates to Europe in terms of federal state construction, in: Europe Today Magazine, 26 November 2020: https://www.europe-today.eu/2020/11/26/what-the-trump-experience-demonstrates-to-europe-in-terms-of-federal-state-construction/

Klinkers Leo, Is Trump a psychopath? Does the Goldwater Rule need to be revised?, in: Europe Today Magazine, 2 september 2020: https://www.europe-today.eu/2020/09/02/is-trump-a-psychopath-does-the-goldwater-rule-need-to-be revised/?fbclid=IwAR2CjnRQ_Y9gyg6acBJwkZSSSHcLtxGHPtDUyULE_355-gINiNcQaTBIBFY

Kromhout, Bas, Hoe de Amerikanen de Europese Unie pushten, in: Historisch Nieuwsblad, november 2012, nr. 41.

Laruffa Matteo, The Institutional Defences of Democracy, 'The institutional defences of democracy'.

Leemans, Arne & Dunsire A., The Public's Servants, European Group of Public Administration, Finnpublishers 1981.

Levine, Robert A., What the EU needs is a copy of 'The Federalist Papers in: The New York Times, 9 January, 1999: https://www.nytimes.com/1999/01/09/opinion/IHT-what-the-eu-needs-is-a-copy-of-the-federalist-papers.html.

Lieberman, J.K., The Litigious Society, Basic Books New York, 1981.

Lindblom, Charles E., The Science of Muddling Through, Public Administration Review, Vol. 19, No. 2 (Spring, 1959), pp. 79-88 Published by: Blackwell Publishing on behalf of the American Society for Public Administration.

Lochem, Peter, van, Rechtsrelativering. Een verkenning op het terrein van het overheidshandelen. Boom 2013.

Logevall, Fredrik, Embers of War: The Fall of an Empire and the Making of America's Vietnam, Random House 2012.

Luykx, Theo, Geschiedenis van de internationale betrekkingen sedert het Congres van Wenen, Elsevier Sequoia, 1971.

Machiavelli, Niccolò, Il Principe, 1513.

Mak, Geert, Reizen zonder John, De Bezige Bij, 2012.

Marsia, Jean, A federal constitution for the United States of Europe, Why and How?, European Society for Defence.

Marquand, David, The End of the West. The Once and Future Europe, Princeton University Press, 2011.

McGee Luke, CNN, 14 February 2021: The EU is facing the most serious crises in its history. Many are wondering if anyone's really in charge: https://edition.cnn.com/2021/02/14/europe/europe-crises-intl-analysis/index.html.

Meerssche, Paul Van Der, Van Jalta tot Malta – politieke geschiedenis van Europa, Standaard, 1990.

Michel. Louis, De As van het Goede, Houtekiet, 2003.

Middelaar, Luuk van, De Passage Naar Europa, Bezige Bij, 2009.

Miert, Karel van, Waarom zwijgen we altijd over onze successen?, in: Knack, 3 mei 2006.

Miert, Karel van, Mijn Jaren in Europa, Lannoo,

Mist over het Kanaal – Britten en Europa, in: krant De Standaard, 10-15 december 1999

Nationale Conventie, Hart voor de publieke zaak, Eindrapport, september 2006.

National Constitution Center (NCC); Cornell Law School, Legal Information Institute (LII); National Conference of State Legislatures (NCSL), Amending the US Constitution; National Archives, Constitutional Amendment Process.

Naylor, R.T., Wages of Crime, Black Markets, Illegal Finance, and the Underworld Economy, Cornell University Press, 2002.

Neely, R., How courts govern America, Yale University Press, 1981.

Nozik, Robert, Anarchy, State and Utopia, Oxford-Basil Blackwell, 1974.

Olthof, Jelte, Patchwork Republic, The Rhetoric of 'We the people' in the United States Constitutional Debates, 1765-1865, Koninklijke Wöhrmann, 2014.

Ostrom, V. The intellectual crisis in American Public Administration, University of Alabama Press, 1974.

Owen, David, An effective Common Foreign and Security Policy (CFSP) for the future, in: How can Europe prevent conflicts?, Philip Morris Institute for Public Policy Research, 1997.

Peeters, Yvo, De hoofdstedelijke functie in federale Staten, De Nederlanden, 1983.

Piepers, Ingo, De onvermijdelijkheid van een nieuwe wereldoorlog, Prometheus Amsterdam 2020.

Pinder Charles, Only a federal European Union can effectively respond to the existential challenges that confront the world, in: Federal Trust, 15 December 2003.

Plattel, Martin G., Utopie en Kritisch Denken, Ambo/Anthos BV, 1970.

Popper, Karl, The Open Society and Its Enemies, Volume I, Routledge 1977.

Popper, Karl, Objective Knowledge, An Evolutionary Approach, Oxford 1979.

Rossiter, Clinton, The Federalist Papers, New American Library of World Literature, 1961.

Schuman, Robert, Schuman Declaration, 9 May 1950.

Siedentop, Larry, Democracy in Europe, Penguin Books, 2000.

Siedentop, Larry, Er is geen eenheid in Europa, in: Knack, 4 januari 2006.

Siedentop, Larry, Europa stuit op nationale grenzen, in: Knack, 21 december 2011.

Smith Charles Hugh Smith, 10 Common- Sense Amendments to the US Constitution, 21 February 2019.

Soeterik, Robert (ed.), De verwoesting van Palestina, Stichting Palestina Publicaties, 2008.

Sparviero, Lorenzo, Open Letter on federal Europe for sardines and other European movements, in: Europe Today Magazine of 19 februari 2020: https://www.europe-today.eu/2020/02/19/open-letter-on-federal-europe-for-sardines-and-other-european-movements/.

Spinelli, Altiero en Ernesto Rossi, Manifest van Ventotene, 1941. www.altierospinelli.org/manifesto/manifesto_it.html.

Staufer, T., Töpperwien N. & Thalmann-Torres U., Switzerland – Swiss Confederation, Handbook of Federal Countries, 2005, Forum of Federations, www.forumfed.org.

Surowiecki, James, The Wisdom of Crowds, 2004.

Thijn, Ed van, De Sorry Democratie, Van Gennep, 1998.

Tombeur, Herbert, De Europese Unie tussen instrumenten en symbolen, in: Internationale Spectator, Instituut voor Internationale Betrekkingen 'Clingendael', september 2002.

Tombeur, Herbert, Federalisme, federaties en Europese Unie, in: Internationale Spectator, Instituut voor Internationale Be- trekkingen 'Clingendael', september 2004.

Toulmin, S.E., The Uses of Argument, Cambridge University Press, 1958.

Truth Defence, GE: 2019: A post mortem on truth': https://www.truthdefence.org/disinformation.

Union of European Federalists: www.federalists.eu/timeline/.

Valaskakis, Kimon, Long-term Trends in global Governance: from Westphalia to Seattle, in: Governance of the 21st Century, Future Studies, OESO, 2001.

Velthoven, Paul van, Franstaligen tegen Vlamingen. Hoe België als natie mislukte, Aspekt, 2012.

Verhagen, Frans, Alle Presidenten. Van George Washington tot Barack Obama, Historisch Nieuwsblad, 2012.

Verhofstadt, Guy, De Verenigde Staten van Europa, Houtekiet, 2005.

Verhofstadt, Guy, e.a., Eigenlijk bent u een Europeaan, Uitgeverij Van Praag, 2007.

Verhofstadt, Guy, Mandeville Lezing 2009, De Verenigde Staten van Europa, 15de Mandeville Lezing, Erasmus Universiteit, 2009.

Verhofstadt, Guy, De weg uit de crisis, De Bezige Bij, 2009.

Verhofstadt, Guy, Een New Age of Empires, de Bezige Bij, 2009.

Verhofstadt, Guy, Een New Age of Empires, De Bezige Bij, 2009.

Verdrag van Westfalen, inclusief het Verdrag van Münster en het Verdrag van Osnabrück, 1648.

Voermans, Wim, Van Europa voor de burger naar Europa door de burger, in: De Verenigde Staten van Europa, Jaar- boek Parlementaire geschiedenis 2012, Boom 2012.

Wagt, Wim de, Wij Europeanen, Uitgeverij Bas Lubberhuizen, 2015.

Werts, Jan, Onstuitbare opmars van de Europese Raad verdient correctie, in: Internationale Spectator, Instituut Clingendael, februari 2009.

Wijnen, Harry van, Grootvorst aan de Maas, D.G. van Beuningen 1877-1955, Balans, 2004.

Winters, Peter Jochen, Die Politik des Johannes Althusius, Verlag Rombach Freiberg im Breisgau, 1963.

Weizsäcker, E. von, Erdpolitik, Neil McBeath, Stuttgard, 1989.

Wood, Gordon, Revolutionary Characters, What made the Founders Different?, Penguin Books 2006.

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13. ANNEX 1: 27 Federal States

This table provides more information on the 27 federal states that together house just over 42% of the world's population.

# Federations	Parts	# Citizens	Census
1. Argentina	23 provinces	44.490.000	2018
2. Australia	6 states	25.670.868	2020
3. Austria	9 states	8.859.000	2019
4. Belgium	3 regions	11.460.000	2019
5. Bosnia-Herzegovina	2 entities	3.324.000	2018
6. Brazil	26 staten + 1 federal district	212.559.417	2020
7. Canada	10 provinces	37.742.154	2020
8.Comoros	3 islands	869.601	2020
9. Ethiopia	10 regions/states	109.200.000	2018
10. Germany	16 states	87.783.942	2020
11. India	29 states	1.353.000.000	2018
12. Iraq	18 provinces	402.220.493	2020
13. Malaysia	13 states	32.700.000	2020
14. Mexico	31 states + 1 district	128.932.753	2020
15. Micronesia	4 states	548.914	2020
16. Nepal	7 provinces	29.136.808	2020
17. Nigeria	36 states	200.936.599	2019
18. Pakistan	4 provinces	207.900.000	2017
19. Russia	22 republics	145.934.462	2020
20. Saint Kitts and Nevis	2 islands	52.441	2018
21. Somalia	18 states	10.760.000	2006
22. South-Sudan	10 states	11.193.725	2020
23. Sudan	18 states	41.800.000	2018
24. Switzerland	26 cantons	8.570.000	2020
25. United Arab Emirates	7 emirates	9.631.000	2018
26. United States of America	50 states	328.200.000	2019
27. Venezuela	23 states	28.435.940	2020
		3.481.912.117	

World population as of January 2021: 7.800.000.000
% Population in 27 federal states: 42%+

14. ANNEX 2: Example of the EU-treaty tangle

EU-countries	Schengen-countries	Not EU-countries	€urozone-countries
1. Austria	X		X
2. Belgium	X		X
3. Bulgaria			
4. Croatia			
5. Cyprus			X
6. Czech Rep.			
7. Denmark	X		
8. Estonia	X		X
9. Finland	X		X
10. France	X		X
11. Germany	X		X
12. Greece	X		X
13. Hungary	X		
14. Italy	X		X
15. Ireland			X
16. Latvia	X		X
17. Lithuania	X		X
18. Luxembourg	X		X
19. Malta	X		X
20. Netherlands	X		X
21. Poland	X		
22. Portugal	X		X
23. Romania			
24. Slovakia	X		X
25. Slovenia	X		X
26. Spain	X		X
27. Sweden	X		
	X	Norway	Monaco
	X	Lichtenstein	San Marino
	X	Iceland	Vatican
	X	Switzerland	

Note: Norway is strongly linked to the EU. It is member of the European Economic Space, part of the Internal Market, a member of the European Free Trade Association, and a member of the Schengen Convention. Switzerland too, is closely linked to the EU by a number of bilateral treaties and operates partly on the basis of EU law to participate in the internal market.

15. ANNEX 3: Congressional Committees US

Here we present the list of the US Congressional Committees as compiled by Wikipedia. This form offers numerous opportunities to acquire additional information via links. This list shows 20 Committees of the House of Representatives and 21 of the Senate. Each Committee has subcommittees. Clicking on a committee will take you to specific information about that committee.

House of Representatives	Senate	Joint
• Agriculture • Appropriations • Armed Services • Budget • Education and Labor • Energy and Commerce • Ethics • Financial Services • Foreign Affairs • Homeland Security • House Administration • Intelligence (Permanent Select) • Judiciary • Natural Resources • Oversight and Government Reform • Rules • Science, Space, and Technology • Small Business • Transportation and Infrastructure • Veterans' Affairs • Ways and Means • *(Whole)*	• Aging (Special) • Agriculture, Nutrition and Forestry • Appropriations • Armed Services • Banking, Housing, and Urban Affairs • Budget • Commerce, Science and Transportation • Energy and Natural Resources • Ethics (Select) • Environment and Public Works • Finance • Foreign Relations • Health, Education, Labor, and Pensions • Homeland Security and Governmental Affairs • Indian Affairs • Intelligence (Select) • International Narcotics Control (Special) • Judiciary	• *(Conference)* (ad hoc, resolves disagreement to a bill) • Economic • Library • Printing • Taxation

(See complete list with subcommittees)	• Rules and Administration • Small Business and Entrepreneurship • Veterans' Affairs *(See complete list with subcommittees)*	

Both the House of Representatives and the Senate have the following types of committees.

Standing Committees
These are committees with a permanent staff. Because they are part of the legislature, they have the power to assess bills and propose measures to their own House. They also have the powers of Congressional Oversight discussed earlier. Of course, to the extent that this fits within the substantive mandate of the Committee.

Special Committees
These are set up by the House or the Senate on a case-by-case basis. Sometimes to conduct specific research or to study something in more detail, or to draft special measures. This often involves subjects that do not clearly fall within the jurisdiction of Standing Committees. Special Committees can be temporary or permanent.

Joint Committees are permanent committees, composed of members of both Houses. They deal with matters of order. For example, they oversee the cleanliness of Congress, or the proper functioning of printing facilities. The chairmanship alternates.

The **Conference Committee** is an ad hoc Joint Committee to resolve differences when the House and Senate have different interpretations of a bill. Such a Committee then drafts a compromise text and submits it for decision to both Houses.

Subcommittees
The twenty committees of the House and the twenty-one of the Senate each have a number of Subcommittees. These are charged with specific tasks within the mandate of a Standing Committee.

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16. ANNEX 4: Arrangement by the House of the Citizens for checking the competence and suitability of candidates for the office of citizens' representative in the House of the Citizens, ex Article II, Section 2, Clause 2

This arrangement is an example for the same arrangement by the Senate ex Article II, Section 3, Clause 2. For clarification, see Chapter 11 of the Toolkit.

The role of citizens before and after elections to the House of the Citizens

1. The transnational political parties that put candidates forward for election shall jointly establish a non-partisan training institute that shall provide an opportunity for those candidates to be trained in the requirements of competence and suitability for the performance of the most important office in the world: political office.
2. The non-partisan board of that training institute shall establish a committee of non-partisan citizens in each Member State one year before the election of a new parliament.
3. The committees examine the credentials of the candidates of all parties in that member state and hear them personally. They do not pass judgment on the political values of candidates, but on whether candidates can be considered sufficiently competent and suitable as members of parliament. Those who pass the examination receive the 'nihil obstat', the sign of no objection, from the committee.
4. After the elections, the non-partisan citizens' committees continue to exist until the next elections. During the parliamentary term, they monitor the behaviour - inside and outside Congress - of the people's representatives. If committees identify behaviour that raises questions in the context of the competence and suitability requirements, they can subpoena the person concerned and hear him or her under oath. If an investigation shows that the conduct is indeed in breach of the competence and suitability requirements, the committee can state this and make it public. The committee does not have the power to remove the member of parliament concerned from political office.

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17. Board of the Federal Alliance of European Federalists

See our website: www.faef.eu.
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