XI. Academic Evaluation: Theorizing European Integration

1. Coming Full Circle: Federation as Union

Finally, the European Union ought to be recognized for what it always was intended to be: a federation. The European Union is a distinctively federal structure with a wide array of functions that are best described as multilevel governance in a European polity encompassing states and citizens alike. The European Union is more than the combination of its parts. It is a body politic in its own right, a composed federation with ambivalent combinations of strong and weak federal qualities. Yet it is more than a moot phenomenon that can only be defined in antithesis to existing states. The European Union, for all intents and purpose, is what its name says, a Union. This reflects its genuine political character and ambition and hence its difference to other existing forms of political authority, be they states, nations or empires. The purpose of the European Union has to be recognized as political – as was the original idea of the Founding Fathers of European integration after World War II. Although purpose and goal of the EU are constitutionally defined as political, its method of policymaking has by and large remained functional. The impulses for the advancement of the EU are a combination of social constructivism, formal and informal political lobbying through legally established institutions based on principled beliefs of the political actors involved, and external pressure.

Federalism is the territorial variant of pluralism, as Karl Loewenstein aptly argued decades ago when discussing "the original telos of federalism as the vertical control of political power." Together with individual rights, federalism and pluralism execute "the function as a sort of shock absorber within the power process," he wrote.[1] Any social grouping that generates, executes and claims authority over people requires legitimacy, loyalty and purpose. A political Union has to be manifest in its constitutional character. A Union is not a contingent political promise, intended to last until limited interests are consummated. A political Union needs to be rooted in shared values, goals and commitments that are accepted by all participants of the Union to last potentially for an unlimited period of time. A political Union cannot be conceived without a set of permanent institutions with decision-making competences, without a territory defined by boundaries, and without a political purpose expressing interests and projecting ambitions, if not power. There can be no doubt that the European Union possesses all these qualities that identify it as a Union. As a Union, by definition, it is a federation.

The traditional use of the terms "federation" and "confederation" was intended to distinguish between strong and weak forms of federal unity. This distinction, invented

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1   Loewenstein, Karl, *Political Power and the Governmental Process*, Chicago: University of Chicago Press, 1965 (2nd ed.):286.

in the nineteenth century, long before the European Union came into existence, began as a useful instrument of political theory to better understand the different depth and intention among federal political systems within single states. As far as the theoretical reflection about the character of European integration is concerned, the distinction between federation and confederation, Murray Forsyth rightly argues, "has tended to become frozen into a rigid antithesis…and preoccupation with the antithesis has the unfortunate effect of deflecting the eye from the common union element in federal systems, and also from the more subtle gradation in the strength and weakness of unions."[2]

Parallel with the process of European integration, the body of literature dealing theoretically with this new phenomenon of Europe has grown to fill shelves. Although purpose and meaning of some of this literature are not always evident, a huge mass of thoughtful insights and stimulating reflections have been added to the overall social science literature. Some of the academic literature on European integration claims to offer a comprehensive theory as to how it ought to be understood. Others declare integration theory dead, obviously in light of an ever more complex process of integration that has gone out of control for one-dimensional theory-building. The approach of the academic literature on European integration is as diverse as it could be. Some texts are normative, others are prescriptive. Some build on social science theories, others on empirical research that is dealing with hard-core facts of integration. Some focus on "history-making" events, such as treaty formation and treaty revision, others look into the daily operational mechanisms of the EU's institutions and their decision-making patterns. Some claim to be authoritative on "path-dependencies" in European integration, others object to such a deterministic view, or even question the very character of the EU as a genuine body politic. Some theoretical work truly builds on earlier efforts and conducts a serious academic conversation, other academic contributions are, sorry to say, autistic and self-referential.[3]

Remarkable paradigmatic changes have occurred in the course of five decades of academic occupation with European integration. According to Thomas Kuhn, paradigms constitute the defining categories of research. They assume ontological evidence about social and other realities that can be used to deepen our epistemological understanding. The matter of something seems clearly and objectively evident, and it is a question of knowledge growth that allows better understanding of its meaning and purpose. Scientific work continues until it reaches a point of accomplishment and exhaustion. It will be challenged by what Kuhn labeled a "scientific revolution," which

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2   Forsyth, Murray, "The Political Theory of Federalism: The Relevance of Classical Approaches," in: Hesse, Joachim Jens, and Vincent Wright (eds.), *Federalizing Europe?: The Costs, Benefits, and Preconditions of Federal Political Systems*, Oxford: Oxford University Press, 1996: 32.

3   For a good overview of the theoretical approaches see Cini, Michelle, and Angela K. Bowne (eds.), *European Union Studies*, Houndmills: Palgrave Macmillan, 2006.

subsequently leads to the establishment of a new paradigm.[4] As the old paradigm in its time, the new one will be rooted in shared common beliefs of those scholars building their work around this new supposition.

As far as academic work on the processes of European integration is concerned, there have been a series of scientific revolutions and even revolutions within revolutions. While some of the literature has been outright dissident, questioning the premises of preceding arguments in the scholarly community, other texts have contributed to the overall search with variations and specifications of a given paradigm, yet amounting to a factual change of perspective. Most of the academic literature on the processes of European integration is inclined to begin by stating in an almost ritualistic way that European integration is not about state-formation. Some authors say this with distinctive normative clarity, definitely wanting to prevent state-formation through the EU. Others say it almost unintentionally, as if to offer an excuse for delving into the sphere of a Union, which still is all too often under legitimacy scrutiny among scholars that study its deliberations and decisions. Turned around, the obsession with defining the European Union and its underlying integration process as definitely not leading to a state (or a "super-state," as the more despicable expression of the same critical feeling goes[5]) indicates the obvious importance of European integration and the pressure under which the traditional state-centrism of most political and social science has come.

In fact, there is no objectivity in the study of the European integration process. Presupposed and more or less principled beliefs of scholars in the field are as common as the prejudice of scholars about the character of principled beliefs among actors that make the European Union work and advance. One commonality is striking among practically all the different schools and trends of academic reasoning about European integration: Most of it takes the functions and procedures of the European Union (in earlier decades: of the European Economic Communities or the European Community) as starting point and framework for its own premises and deductions, conclusions and prescriptions. Either "history-making" events – that is to say treaty revisions – or regular operational mechanisms of policy-making – agenda-setting, policy-formulation, formal and informal negotiations, bargaining and the logic of compromises, finally policy implementation and assessment of policy implications – are perennial topics that surface in the academic work on European integration. None of this is questionable, let alone illegitimate. All of it has contributed to our understanding of European integration as a process and a polity. But for most of the time, the question "how?" has overshadowed the question "why?." We can say a lot about how the European Union operates, advances, turns cycles and advances again. But we have often been confused why it happened, or why it happened notwithstanding powerful arguments of logic and

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4   Kuhn, Thomas, *The Structure of Scientific Revolutions*, Chicago: University of Chicago Press, 1962.
5   See Morgan, Glyn, *The Idea of the European Superstate: Public Justification and European Integration*, Princeton: Princeton University Press, 2005.

scholarly reasoning. The academic reflection on European integration has largely been defined by the functional method used by political actors to generate integration. It has almost become a victim of this primacy for function – as the integration process itself often became.

The history of European integration gives many examples of how European integration was advanced at critical moments or relaunched after periods of stasis, of stagnation or even regression. Always, a new beginning was made possible because of political choices, political leadership and political commitment. Time and again this has supported the assumption that European integration first and foremost is a political operation. Surprisingly enough, social and political science studies on European integration have often been less political than the issue of their study, no matter its deficiencies. "The underlying technicity" of European integration, as Murray Forsyth calls it,[6] has also shaped the succeeding academic reasoning about it. The choice made by Jean Monnet, by Robert Schuman and in later decades by the authors of the Single European Act, or those drafting the Treaties of Maastricht, Amsterdam, Nice and Lisbon did define the scientific paradigm on which European integration theory thrived. The functional logic has been successful and a lot has been achieved on this basis. The functional logic has framed the academic discourse, no matter the paradigmatic changes. Whether liberal intergovernmentalism or multilevel governance, whether application of rational choice theory or whether international relations insights into the rising importance of transnationality: The underlying premise of practically all relevant theoretical contributions over five decades has been the functional logic of the integration process itself.[7] This, by the way, is also the main reason for the reluctance to qualify most academic contributions about European integration as elements of a general and objective integration theory. By and large, they are theories about the integration in Europe, which is an altogether different thing.

Usually, they offer theories about the functional side of European integration in a given time, and that is fair enough. But they often remain silent on the political intention and notion of functional integration, on the underlying constitutional principles of the institutional development, and on the framing of integration policies. The primacy of function, its root causes and their effects, produced different sets of arguments, all worth considering. As the integration process itself, they tended to underestimate or neglect the political and constitutional side of the process. Political actors have focused all too often on institution-building matters as if that was a goal in itself. Policy-formulation, decision-making and policy-implementation had their time, of course, and also their

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6   Forsyth, Murray, "The Political Theory of Federalism: The Relevance of Classical Approaches," in: Hesse, Joachim Jens, and Vincent Wright (eds.), *Federalizing Europe?: The Costs, Benefits, and Preconditions of Federal Political Systems*, op.cit.: 26; see also Beach, Derek, *The Dynamics of European Integration: Why and When EU Institutions Matter*, Houndmills: Palgrave Macmillan, 2005.

7   See Brenner, Michael J., *Technocratic Politics and the Functionalist Theory of European Integration*, Ithaca, N.Y.: Center for International Studies, Cornell University, 1969.

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corresponding academic literature. Ultimately however, the process and its purpose were political, as has increasingly become evident. European integration was never meant to only produce an affluent and peaceful continent for the sake of affluence and peace. The original intention was to redesign Europe in order to position it anew in the world. The prime focus on economic integration – and as a consequence economic theories of integration[8] – was always meant to be a tool in order to reach political goals at last. Detours, loss of time and the relaunching of initiatives could never obscure this fundamental intention and purpose of European integration. The European Union is a political construction, remains a political purpose and can only be properly understood by recognizing its political ambition to be an actor of global reach. Two fundamental phenomena accompanied the integration process and the academic conversation about European integration with startling consistency: the ritualistic dispute about the non-state quality of European integration, and the atrophic, often cemented debate about federalism.

These astonishing facts are obviously related to the function of discourses – political as well as academic – about the finality of European integration. These discourses never fulfilled the purpose of advancing the integration process toward its very finality. Often, that was not even their prime intention. They rather tried to frame the debate about epiphenomena and matters relevant in their own right, but they were immediately and highly charged if associated and contextualized under the banner of "political finality." From theology, the highly secular European Union could learn that finality is not of this world. Instead, along with growing secularization many political actors try to increase the faith in political terminology. For example, the use of the term "irreversible" – meant to indicate that the European Union cannot be dissolved any more – fulfills functions of political metaphysics. No political institution on earth has ever proven to be "irreversible," so far with the exception of the Roman-Catholic papacy, the oldest public institution in the world. The invocation of the term "irreversible" in the context of European integration has always had the function of exonerating a given result of the integration process by exorcising those ghosts that dared to express a contrary intention to its content and effect. These were and remain largely ritualistic exercises. Seldomly can they properly contribute to advance, reverse or reinvent European integration at any given stage.

The main reason for the astonishing ritual that has accompanied the notion of federalism throughout the history of European integration and its academic reflection goes beyond any serious and necessary dispute: The normative discourse, but even more so the gut feeling attributed to many aggressive debates about the meaning and goal of the European Union, is contradictory. It often tries to cloud the fact that federalism has

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8   See, for instance, Molle, Willem, *The Economics of European Integration: Theory, Practice, Policy*, Aldershot: Ashgate, 2001; El-Agraa, Ali M. (ed.), *The European Union: Economics and Policies*, London/New York: Prentice Hall, 2001; Verdun, Amy, *The Euro: European Integration Theory and Economic and Monetary Union*, Lanham: Rowman & Littlefield, 2002.

long been established in Europe. It has been established with the original decision of the Treaties of Rome to constitutionalize the process of European integration, thus taking it away from the unpredictability of political cycles and fashions, logic and illogic.

As much as European integration has been a process ever since, it remains one beyond the fiftieth birthday of the Treaties of Rome in 2007. As much as the evolution of the European federation has been an unending process, it still remains so. It is a federation in permanent making, as all other federations in the world are. The fact that this federation is properly called the European Union is consequential only in so far as the political intention, structure and meaning of the European federation-building process is concerned. The European Union's purpose is a political one. Its institutions are multiple and permanent, its boundaries defined and its policies legally binding for all EU citizens.

Federalism has never been a static concept or a dogmatic matter of one-size-fits-all. It simply is "the theory or advocacy of federal political orders, where final authority is divided between sub-units and a center."[9] Federalism is a concept about shared authority, power and rule. It describes a political structure without formalizing its content, functions, scope and depth. Content, function, scope and depth of any given federation might change in the course of time as empirical evidence from all federations indicates. Yet, federations are distinctively different from unitary arrangements of authority, power and rule. For this simple reason, it is appropriate to call federalism the territorial variant of pluralism. Such a lose definition of federalism leaves enormous space not only for its development, but also for the interpretation of its constituent parts, functions, inner dynamics, decision-making processes and implications. Yet, the concept of federalism was never intended to be different – which is also true for pluralism as its conceptual equivalent. Its application to the process of European integration has a fundamental advantage so much missing and searched for by most of the scholarly conversation, a fixed starting point of reference and a dependent variable.

Having in mind the lose notion of federalism as territorial pluralism and a divided order of authority, power and rule, Carl Joachim Friedrich, one of the distinguished political scientists of the twentieth century, was an early advocate of a paradigmatic shift in federal studies. Already in 1968, in light of the emerging early success of European integration, he suggested to move the discourse about federalism further. He proposed to shift the focus from an analysis of federalist structures – as opposed to unitary, and notably to totalitarian structures of authority, power and rule – to an analysis of federal functions and federalizing tendencies. While federal structures had received sufficient attention throughout the modern history of political philosophy, the empirical-based study of federal functions and processes would be more fruitful, Friedrich argued with firm commitment to the value of European federalism: "We have

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9   Follesdal, Andreas, "Federalism," *Stanford Encyclopedia of Philosophy*, http://plato.stanford.edu/ entries/federalism/.

federalism only if a set of political communities coexist and interact as autonomous entities united in a common order with an autonomy of its own;" and, "Federal relations are fluctuating relations in the very nature of things. Any federally organized community must therefore provide itself with instrumentalities for the recurrent revision of its pattern or design."[10] This paradigmatic change in the focus of scholarly work on European integration did occur, and it did so with such empathy and effect that, increasingly, definition and meaning of the structure of this process were neglected. To make matters worse, the structure of the process – its constitutional framework – was often absorbed and incorporated as a sub-set of its very functions and hence as any other functional component. The prefigured structure of European integration was not only neglected, but also redefined as one element among other theories about the integration function. This is how "federalism" became a passing theory in the huge and growing edifice of academic reasoning about European integration, while in fact it was and remains the starting-point and root cause of all subsequent theorizing about European integration. With the breakthrough of the political character of European integration and its overall public recognition, the huge corpus of academic reasoning about European integration ought to be understood as a wide and pluralistic set of functional expressions about the federal structure of the European Union.

Five decades after the early work on federalism,[11] there is growing need to again locate all theories and theoretical interpretations of the European integration process into a broader historical picture. It would not require a paradigmatic shift in the sense of Thomas Kuhn's scientific revolution. It only would require a recalibration of the relationship between the original theory of federalism, and secondary and predominantly functional theories about specific stages of European integration. This would not devalue the rich contribution to the academic field of theoretical literature about European integration. But to accept the European Union as a federation in form would be helpful for the focus of research on many pragmatic and practical aspects on European integration as function – research on the EU's inner mechanics, its way and means of generating and distributing power, competences and resources; its ways and means of agenda setting, policy-formulation, decision-making and policy implementation; its impact on member states and Union citizens, its deliberative networks and policy-communities; its transnational and transgovernmental modes of operation, the role of leadership in the EU, the growing scope of policy-issues covered by the EU, and the balance between its institutions; and the increasing role of the EU as an actor in international relations and the effect of European integration on the evolution of political theory, particularly on notions of democracy, sovereignty, and order-

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10   Friedrich, Carl Joachim, *Trends of Federalism in Theory and Practice*, New York: Praeger, 1968: 6-7; also see Friedrich, Carl Joachim, and Robert R. Bowie (eds.), *Studies in Federalism*, Boston: Little, Brown, and Co., 1954.

11   See also Macmahon, Arthur W. (ed.), *Federalism: Mature and Emergent*, New York: Russel & Russel Inc., 1962.

building in a world, in which states - either unitary or federal - and supra-national federations obviously co-exist and form a weak new balance of world order.[12]

Without turning the bulk of theoretical literature on European integration artificially upside-down: In the final analysis, practically all of it can be categorized as a contribution to the continuously evolving federalism theory of the continuously evolving European Union. Federalism is the encompassing framework under which the most diverse combinations of theories and the most diverse theoretical debates about the European integration process take place. Federalism is not just one of the many theories about European integration, it is the constitutional framework under which other theoretical considerations could begin to flow and will continue to do so. Without a federal starting point – that is to say with the early political commitment to ultimately achieve federal Union – the European Union would never have come into being. Without the early decision for federalism as the organizing principle of a new order for Europe, theories about European integration would not have evolved and flourished.

This argument might sound provocative. Its central point is not stressed to denigrate five decades of valuable theoretical contributions to social sciences. But time has come – due to the very evolution of the European Union – to recalibrate the theoretical reflection about European integration. All theory is relational, as are all key terms of political philosophy. Federalism is a relational term. It relates to specific forms of divided authority, power and rule. As a consequence, federal structures will always be highly diverse in their specific functions. Federalism also relates to specific assessments of the functions of a federal structure of authority, power and rule. The more the political character of the European Union has been established – according to the original intentions and ultimate aspirations of the Founding Fathers of European integration – the more its character as a federation ought to be recognized. The huge set of theoretical literature on European integration has been weak on authority, power, and rule. This has largely been the consequence of the weakness of the European Union (and its predecessors) as far as its claim to exert authority, its ambition to generate power and its operations concerning the struggle for rule were concerned. An unfocused Union must produce an unfocused body of literature about it.

The European Union is not a state – and has never ever claimed to be one.[13] Such assumption was either wishful thinking, or a product of fear or an effort of slandering, or a little bit of everything by those not wanting to apply rational analysis and judgment to the evolutionary process of the EU. No legal dogma, no political majority or philosophical law requires a federation to be a state. But that all federations represent different expressions of the one original federal decision to create supranational institutions, no matter how incomplete and weak, should be recognized. It is also worth

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12   See on the overall context also Dinan, Desmond, *Encyclopedia of the European Union*, Houndmills: Palgrave Macmillan 2005 (2nd. rev.ed.).

13   See Leonard, Dick, and Mark Leonard (eds.), *The Pro-European Reader*, Houndmills: Palgrave Macmillan, 2002.

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recalling that the concept of federalism is older than the concept of statehood. It would facilitate further growth of theoretical knowledge about the functions of the European Union if consensus would be reached, at last, on its structure as one quintessentially being federal.

By its very nature, European integration is a process and will remain a process, as all political structures do. The idea of "integration theory" is in itself questionable as its content must change with the development of integration itself. This does not render earlier theoretical contributions obsolete, naive or false. A theory of European integration independent of and in contrast to the recognition of its structure as federal is however a-historical and ultimately apolitical. Proponents of an autonomous theory of European integration must at least accept that their theoretical endeavor is contingent and relational, not only as far as their topic is concerned, but also with regard to the time-line of their propositions. To recognize the European Union as a federation finally recognizes the dependable variable Ernst Haas was looking for to anchor his analysis of European integration. In the 1950's, his theoretical explanation of the early beginnings of European integration became famous under the heading "neo-functionalism." In a way, neo-functionalism became the authoritative theory of European integration.[14] Two decades later, Haas declared integration theory dead: "The task of selecting and justifying variables and explaining their hypothesized interdependence cannot be accomplished without an agreement as to possible conditions to which the process is expected to lead. In short, we need a dependent variable."[15] The dependent variable Haas called for did not yet exist in 1971. The European Community lacked focused political profile and recognizable ambition. In the early twenty-first century, the reality of the European Union cannot longer justify this reluctant and skeptical perception of purpose and scope of European integration: The question of the structure of the European Union has been resolved while the reasoning about its functions remains.

Integration as process will go on. But integration as structure has created a federation called the European Union. This European Union as a European federation will prevail as the dependent variable for further research and academic dispute. Its functions will continue to shape the understanding of integration, but this can hardly add anything else to the understanding of its structure. Therefore, more promising seems to be further research on the authentically political nature and function of the European Union, on its mechanisms of decision-making, the inter-connectedness between the European level and the national levels of government, the impact of European integration on the constitutional systems of its member states, party politics,

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14 Haas, Ernst B., *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, Stanford: Stanford University Press, 1958.

15 Haas, Ernst B., "The Study of European Integration: Reflections on the Joy and Anguish of Pretheorizing," in: Lindberg, Leon N., and Stuart A. Scheingold (eds.), *Regional Integration: Theory and Research*, Cambridge, MA.: Harvard University Press, 1971: 18.

EU bureaucracy, and organized interest and public opinion.[16] It will be productive to broaden the research agenda as far as the European Union as international actor is concerned. The role of a supranational federation in the shaping of world order-building will require fresh methodological and empirical work.[17] The future of the nation state, of course, is the other big issue emanating from the rise of European integration.

Theoretical reflection about the future path of the European Union remains important. It will enhance our understanding of its inherent processes and it will give inspiration to deal with further adaptations and improvements of the EU's institutional mechanisms, policies and operational modes. As administrative science, the theoretical occupation with EU integration might have its best time yet to come. As policy analysis, the study of the European Union as Europe's federation will deepen our knowledge about procedures and effects of integration. The more this is linked to the categorically fundamental notion of all political science – authority, power and rule – the more it will be truly political and not only functional. Five decades after its beginnings in an atmosphere of trial and error, the European Union does not need to be linked any more to the question of whether or not it is a state or will become one. It is also of limited insight to compare the European Union to former phases of Europe's history, such as the Austro-Hungarian multinational Empire, or alluding to the idea that the EU could develop into a new Byzantium with the US as the new Rome.[18] Finally, it is of limited heuristic value to give in to the formula that the European Union is the first post-modern form of organizing politics.[19] This is true as much as post-modern philosophy is true – and limited with its limited value to relate form and norm. Postmodernism does not answer normative or moral questions along the line of "why?" or "what for?." Assessing integration on this philosophical basis will be confronted with the same limits of its reasoning as its underlying postmodern philosophical methodology. It seems much more convincing to return to a classical, yet timeless understanding of basic structures of ordering the public sphere by recognizing the European Union as a federation in search of a global purpose and in need of a refined constitutional patriotism.

This decision will not overcome the idiosyncrasies of the EU. It will not limit or even eliminate the procedural character as epitomized in the perennial use of the term "European integration." This remains an open-ended saga, and surely the best one in the history of Europe as far as territorially defined authority, liberal modes of power and consociational mechanisms of rule are concerned. Yet, it is appropriate to finally grant

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16 See, for instance, Richardson, Jeremy J. (ed.), *European Union: Power and Policy-Making*, London/New York: Routledge, 1996.
17 See Murray, Philomena, "Towards a Research Agenda on the European Union as a Model of Regional Integration," *Asia-Pacific Journal of EU Studies*, 2.1(2004): 33-51.
18 Ferguson, Niall, *Colossus: The Price of America's Empire*, New York: Penguin Press, 2004: 227-257 ("Europe between Brussels and Byzantium").
19 Cooper, Robert, "The Post-Modern State," in: Leonard, Mark (ed.), *Re-Ordering the World: the Long-Term Implications of September 11*, London: The Foreign Policy Center, 2002: 11-20.

the European Union the status of what it has become since it began to grow into something it could only end up with: Europe's first ever, and therefore exceptional, supranational federation. This breakthrough in academic reasoning about European integration will sharpen the theoretical instruments, methods, approaches, and concluding hypotheses with which to study future policy-processes and the impact of the European Union.

2. Functional Prerogatives and the Intergovernmental Proposition

By and large, the academic discourse of the past five decades about European integration reflects the inherent evolution of the integration process. As European integration began with functional and sectoral integration of key economic activities among six founding members of the European Economic Communities, it was plausible to echo this approach in the theoretical reasoning about European integration. Functionalism became somewhat the authoritative theoretical line of the study of European integration. Functionalism was contextualized in the broader genre of international relations theory. This was appropriate as the Treaties of Rome were an international arrangement among sovereign states and as such an element of the formation of international organizations and international law. The assessment of the long theoretical journey of academics parallel to the development of European integration requires clarification in its own context. Each theory normally begins with a basic perception of social realities in a given time and under conditions of available or selected knowledge of the phenomenon it is reflecting about. All theoretical contributions to better understand European integration have made subjective choices about content, scope and intention of their analysis. Often, they were focused, poignant contributions to academic battles taking place in scholarly circles. Their strengths and weaknesses were revealed only over time and with considerable distance to the actual writing of a certain theoretical text.

It is surprising to see how often the work of David Mitrany is mentioned in the reflection about functionalism as lead theory on European integration. With his emphasis that functionalism only knows one logic, which is "the logic of the problem,"[20] he offered insights into the prospect for "a working peace system." His focus was not on Europe, and in later writings he has been highly critical of European regional integration: It is still territory-based and hence doomed to repeat the old mistakes of the state-system. His writing had a surprisingly un-institutional dimension. Mitrany considered himself to be writing in the tradition of social engineering. He was an advocate of rationality and considered all human beings capable of creating the conditions for a lasting peace. This should be done through the merging of social

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20 Mitrany, David, *The Functional Theory of Politics*, London: Martin Robertson & Co., 1975: 258.

functions, thus preventing the radicalization of competitive ideas or realities erupting into new conflicts and even wars. Mitrany's discussion of rational and technocratic methods was rooted in a normative approach of how to prevent war and make peace. Mitrany was highly critical of the primacy of national sovereignty among states. He advocated a view of states defined by what he called their "material interdependence."[21] With this premise, he pleaded for the fusion of some of their functions and suggested that this would happen almost as a natural process, as it would "merely rationalize and develop what is already there."[22] Mitrany never explicitly outlined the necessary political actions and processes it would take to engage states in the functional transfer of competences. In the final analysis, he also left unanswered the question as to whom these competences should be transferred. The beginning of European integration was criticized by Mitrany as a path following a territorial logic and not a functional one. In the end, the most powerful states would dominate the EEC. Mitrany saw European integration potentially as replicating state-like functions without the cohesion of the state. With this argument, ironically, he introduced both the leading theoretical guideline for the subsequent understanding of European integration and its strongest critique: The process was one of functional transfer of sovereignty and competence and at the same time, as it seemed to copy the traditional European state, it would fall short of the strength of the state.

Not surprisingly, Ernst B. Haas has criticized Mitrany's concept of a social, if not natural, automatism toward the functional fusion of states. It reminded him of Marxist-Leninist aspirations to replace the rule of man by the "administration of things."[23] Ironically, the inherently apolitical nature of Mitrany's work tried to achieve an extremely political goal, namely global peace. This surprising disconnect from the real sphere of politics as a process of rule did not happen in the theoretical work of Ernst B. Haas. His study of the early stages of European economic integration was labeled "neo-functionalism." While he shared Mitrany's insight into the rising interdependence, converging political preferences and the positive effects of the merger of state functions on the supranational level, he undertook a thorough empirical study on the specific circumstances that would most likely enable the EEC to build on the experience of the European Coal and Steel Community and to reach compromises between differing national interests in Western Europe. His 1958 study "The Uniting of Europe" – published at Stanford as other important theoretical works on European integration were in later decades – defined the parameters of empirical-based theoretical research on European integration for a long time. With the European Coal and Steel Community, "the decomposition of old nations can be systematically analyzed within the framework

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21 Mitrany, David, *The Progress of International Government*, New Haven: Yale University Press, 1933: 101.
22 Mitrany, David, *A Working Peace System*, Chicago: Quadrangle Books, 1943: 81.
23 Haas, Ernst B., *Beyond the Nation State: Functionalism and International Organization*, Stanford: Stanford University Press, 1964: 9.

of the evolution of a larger polity – a polity destined, perhaps, to develop into a nation of its own."[24] The European Coal and Steel Community had become the successful blueprint for the emerging European Economic Communities, "because it offered a multitude of different advantages to different groups."[25] Haas proposed the most evident application of the use of the principle of functional integration, namely the introduction of a new and larger polity. It took almost five decades of theorizing on European integration to achieve more or less consensus among scholars in the field on this early characterization of the European Union. For Haas it was not spectacular or doubtful, but empirically evident what took other scholars five decades to discover after much pain and through much controversy.

Haas systematized what he considered insights into the evolution of the emerging European integration process. Integration should begin with cautious steps in fields of less importance and controversy; a high authority needed to be established to oversee the process outside the control of national interests; the integration of specific economic sectors would enhance the functional need to integrate related economic spheres among the participating states; social groups would gradually shift their loyalty to the emerging supranational structures; deepened economic integration would create the need to stronger institutionalize the process and enhance the regulatory requirements; and finally, political integration would become almost inevitable. His theoretical clarity was the most precise lightning rod for the early years of integration studies – and probably remains closest in reconnecting the theory of European integration to the original relationship between the political idea of federalism as a structure of rule and the technical idea of functionalism as a method of implementing and advancing it.

In his very learned study about the evolution of theories of European integration, Ben Rosamond has reconstructed the context in which the study of Ernst Haas could evolve. The behavioral school in American political science – at Stanford most notably represented by Gabriel Almond[26] – was emerging with ever increasing impact. "The behavioral movement," Rosamond wrote, "directed scholarship toward the analysis of political behavior and, therefore, closer to the study of political processes than earlier forms of political analysis which had been heavily institutional and constitutional in their focus."[27] This development in political science methodology coincided with the origins of the "Monnet method" of European integration. Thus Haas's proposition to consider European integration as the expression of a neo-functionalist process became

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24 Haas, Ernst B., *The Uniting of Europe: Political, Social, and Economic Forces, 1950-1957*, op.cit.: xi.
25 Ibid.: xiii.
26 See the classic study of Almond, Gabriel, and Sidney Verba, *The Civic Culture: Political Attitudes and Democracy in Five Nations*, Princeton: Princeton University Press, 1963.
27 Rosamond, Ben, *Theories of European Integration*, Houndmills: Palgrave, 2000: 54; also see Nelsen, Brent F., and Alexander Stubb (eds.), *The European Union: Readings on the Theory and Practice of European Integration*, Houndmills: Palgrave, 2003 (3rd ed.); Wiener, Antje, and Thomas Diez, *European Integration Theory*, Oxford: Oxford University Press, 2004.

rooted both in empirical politics and innovative academic methodology. This did not render institutional and constitutional approaches obsolete. With almost cyclical permanence, other methodologies and "schools" of theorizing about European integration followed. But until the early 1970's, none was more influential than neo-functionalism.

Its findings were further rooted in economic theory by the work of Leon N. Lindberg, whose theory of "spill-over" effects within neo-functionalist processes of integration became something of a mantra for generations of students of the European project. His theory – like Haas's published at Stanford – tried to further develop the proposition of Haas that integration breeds integration. The establishment of economic integration in one sector would automatically entail integration of other sectors, Lindberg argued. In accordance with Haas, he defined integration as a process. Following the classical logic of federal notions of shared authority, he understood delegated decision-making as "a basic precondition in shared decision-making." And he concluded: "The processes of sharing and of delegating decision-making are likely to affect the governmental structure in each state involved."[28] Formal and informal means of decision-making and the inevitable development of central institutions would generate an inherently expansive character of European integration functions. "Spill-over" would become the inevitable consequence. "In its most general formulation," Lindberg wrote, "'spill-over' refers to a situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth."[29] Lindberg's almost deterministic concept of "spill-over" as a continuous pattern of widening integration was criticized as often as it failed in reality. Yet soon thereafter it again was proven correct as, exactly because of earlier failures, new dimensions were added to the substance of European integration, its growing institutions and expanding functions. What ought to be added is the fact that the "original goal" also expanded: From the original purpose of reconciliation (under enormous internal pressure) among European nations and former state enemies, it slowly and gradually grew into the projection of the European Union as a global provider of peace and stability (though only under enormous external pressure). Lindberg also underestimated the ability of the partners in the European integration process to organize detours in order to reactivate the process once it became hopelessly stuck.

Forgotten and yet highly relevant for any contemporary reflection about the functionability of EU institutions is Lindberg's insight about the "integrative impact of the central institutions": In accordance with general research on organizational

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28   Lindberg, Leon N., *The Political Dynamics of European Economic Integration*, Stanford: Stanford University Press, 1963: 6.

29   Ibid.: 10.

sociology, he proposed that the relevance of the institutions of the European integration process "will depend in part upon the competencies and roles assigned to them. Much, however, depends upon whether or not the institutions make full use of their competencies and upon how they define their role."[30] This was a clear reference to the importance of an actor's behavior, recognizing the issue of leadership and the role of policy-communities, formal and informal networks of delegation, consultation, agenda-setting, shaping policy-decisions and supervising their implementation. Further theoretical work on the European integration process generated valuable studies. Philippe Schmitter, to mention but another Stanford political scientist, aimed at sophisticating neo-functionalism by breaking his actor strategy of European decision-making down into characteristics such as: spill-over, spill-around, buildup, retrench, muddle-about, spill-back, and encapsulate.[31] This jargon added valuable insights into actors' behaviors and their preferences under conditions of complex policy-making processes. However, such theories did not answer questions about the structure of European integration. More and more, neo-functionalism reached its limits, as it did not "spill-back" to its federal starting premise and subsequently to constitutional studies.

Ernst Haas wrapped up the result of more than a decade of debate and theoretical reflection when in 1971 he declared neo-functionalism merely a pre-theory, lacking a dependent variable as the ultimate reference point of its reasoning. As long as the final course of European integration remains blurred, he argued, the explanatory power of any pre-theory, including neo-functionalism, will be limited. Integration theory could no longer pretend to explain something that did not yet exist and was proceeding without coherent knowledge about its final cause. For Haas, as he stated in an article in 1975, integration theory had become obsolescent.[32] He left the stage to the rising paradigm of intergovernmentalism. Ultimately, this new theoretical approach of assessing European integration was another variant of functionalism. One could label intergovernmentalism the flip side of federalism, although its proponents preferred to be considered ardent opponents of federal theories.

Yet, theirs was not a theory of the structure of European integration. It was another theory of the functions of integration in light of the political events of the mid-1960's. At the beginning of their theoretical reasoning was not a paradigmatic revolution, but rather General de Gaulle. The General's veto on British EEC membership in early 1963 was the first strong indication of the ongoing primacy of national interests over the necessary community spirit. When the French President insisted on the continuous application of unanimity in EEC decision-making in 1965, this had a strong impact on all realists of international relations who had already been suspicious of the normative

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30   Ibid., p. 8.
31   Schmitter, Philippe, "A Revised Theory of European Integration," in: Lindberg, Leon N., and Stuart A. Scheingold (eds.), *Regional Integration: Theory and research*, op.cit.: 242.
32   Haas, Ernst B., *The Obsolescence of Regional Integration Theory*, Berkeley: Institute of International Studies Working Paper, 1975.

perspective of turning the structure of European state-relations from a realistic system of balance of power to a federal system of shared sovereignty. De Gaulle's policy of "empty chair" filled their plate with strong and seemingly convincing arguments. The intergovernmental paradigm survived the integration crisis triggered by de Gaulle. It even survived the overcoming of this crisis as indicated by the continuous pooling of sovereignty that has evolved since the promulgation of the 1986 Single European Act. It required the introduction of the European currency, the deployment of European Peace Keeping Forces across the globe and increasing European inroads into matters of justice and home affairs to shift the underlying assumption of many theories of integration to the sphere of institutional and constitutional considerations. Only in recent years has the basic decision for a federal Union begun to serve with plausibility as the "dependent variable" in the debate on integration theories.

Decades ago, Stanley Hoffmann was the first who had offered a sharp and concise argument in favor of accepting the ongoing role and obstinate reality of the European nation state. He argued, in the mid-1960's, that European unification as a call for "national self-abnegation" had become the victim of the prevalent strength of the nation state as the single most important factor in international relations.[33] Eloquently, he underlined the logic of realism in the theory of international relations: "As the super-powers compete … the nation state becomes the universal point of salience."[34] For Hoffmann, European integration was only conceivable as a regional subsystem of the global international political system. As such it would always remain limited in its claim to redirect state relations. This holds true as far as the neo-functional theory of spill-over effects is concerned: "The model of functional integration …is essentially an administrative model, which relies on bureaucratic expertise for the promotion of a policy defined by the policy authorities, and for the definition of a policy that political decision-makers are technically incapable of shaping."[35] Beyond his sharp critique of neo-functionalism as basically apolitical, Hoffmann also took issue with the very idea of European integration as a federalizing process. He challenged the goals, methods and results of the approach taken by Jean Monnet in the 1950's. In questioning their ability to achieve a federal structure, he was starting with the assumption of absolute losses and absolute gains that were at stake. Should a federal structure be established, the nation state would only lose. He understood the functional approach of Monnet as the effort to change the structure of the nation state by circumventing an outright assault on its core. Comparing the process with the method of peeling an artichoke, Hoffmann concluded: "As the artichoke's heart gets more and more denuded, the government's vigilance gets

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33   Hoffmann, Stanley, "Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe," *Daedalus: Journal of the American Academy of Arts and Sciences*, 95.3 (1966): 866.
34   Ibid.
35   Ibid.: 887.

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more and more alerted."[36] Nation states would never accept that the heart of their sovereignty be taken away by European functionalists or, even worse, federalists.

Moreover, Hoffmann argued, the Founding Fathers of the European Economic Communities never agreed on whether they wanted to create a "security community" in order to pacify Europe after its long history of warfare, "or whether the main goal was the creation of an entity whose position and might could decisively affect the course of the Cold War in particular, of international relations in general." The idea that European integration could lead to a new European polity as more than a contribution to international relations was rejected by Hoffmann: "If we look at the institutions of the Common Market as an incipient political system in Europe, we find that its authority remains limited, its structure weak, its popular base restricted and distant."[37] This was certainly a fair argument in 1966, but it could not exclude later developments that proved skeptics wrong as far as limited authority, weak structure and restricted popular base of the integration process are concerned. Hoffmann discussed the possibilities of parliamentary politics with a weak executive in which short-term political bargaining with a focus on immediate advantages prevails over long-term planning. As this was already a sorry reality in France's Fourth Republic, he did not want to see the method repeated in the Common Market, as he called the EEC. Hence, he concluded, the promise of European federalism had failed.

Normatively, his criticism of federalism was a fair point in light of the European realities of 1966, but it could not give a definite answer in face of an open future of European integration. Yet, Hoffmann initiated influential research based on the assumption that the EEC is not more than an intergovernmental structure in the international order. Democratizing and constitutionalizing the EEC, as Hoffmann rightly asked for, took almost four more decades. Yet in the end, it did happen. Referring to Hoffmann's position in the academic debate, Andrew Moravscik – like Hoffmann at Harvard – refined the theory of European intergovernmentalism to perfection. He understood every aspect in the evolution of European integration from the Messina conference to the Treaty of Maastricht as a chain of intergovernmental bargaining, presumably proving once and forever that the federal proposition was wrongly applied to European integration. It would however have been more correct to simply state that the democratic and parliamentary aspiration was still missing in the integration process, while it was rightly considered to be essential in order to legitimize European integration as federal.

Andrew Moravcsik's influential study "The Choice for Europe" became the quintessential expression of what was to be labeled "liberal intergovernmentalism" in the field of theorizing academics. Recognizing that the European Community was a "unique, multileveled, transnational political system," Moravcsik understood European

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36 Ibid.: 884.
37 Ibid.: 885.

integration as it had evolved until the Treaty of Maastricht as the result of three factors: "patterns of commercial advantage, the relative bargaining power of important governments, and the incentives to enhance the credibility of interstate commitments."[38] He accepted that national sovereignty had been transformed to the European level, but was adamant in concluding that this phenomenon had not limited the primacy of the nation state in the bargaining process for economic gains through European channels. Moravcsik focused his study on the "grand bargains" that have paved the way for European integration, ultimately leading to the Treaty of Maastricht. The gradual, though creeping process of transferring sovereignty to European institutions was recognized by Moravcsik. Yet, for him the European Community remained an international organization and not one level of a federal structure: "Choices to pool and delegate sovereignty to international institutions are best explained as efforts by governments to constrain and control one another – in game theoretical language, by their effort to enhance the credibility of commitments. Governments transfer sovereignty to international institutions where potential gains are large, but efforts to secure compliance by foreign governments through decentralized or domestic means are likely to be ineffective."[39] Moravcsik's findings corresponded to the influential historical research of Alan Milward, who explained the beginning of the European Economic Communities as the "rescue of the nation state."[40] This "apparently paradoxical claim"[41] was concomitant with the international relations theory of neo-realism, most aptly articulated by Kenneth Waltz.[42] Rational state behavior – such was the common denominator between their theoretical premises – does not emerge from principled beliefs, fixed premises or pre-figured international norms. Instead it is the result of dynamic internal policy processes intended to maximize the national interest. Based on this assumption, European integration must always remain a zero-sum game, where one's country's gain is another country's loss. However, if European integration was only about short-term economic gains, one was left to wonder why it had become necessary at all as economic gains could well have been organized outside a new political structure. And if European integration was only another organizational component of a realist, that is to say, state-based international order, one was left to

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38 Moravcsik, Andrew, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, op.cit.: 1-2.; also see Moravcsik, Andrew, *Negotiating the Single Act: National Interests and Conventional Statecraft in the European Community*, Cambridge, MA: Minda de Gunzburg Center for European Studies, Harvard University, 1989; Moravcsik, Andrew, *Why the European Community Strengthens the State: Domestic Politics and International Cooperation*, Cambridge, Ma: Minda de Gunzburg Center for European Studies, Harvard University, 1994; Moravcsik, Andrew, *De Gaulle and Europe: Historical Revision and Science Theory*, Cambridge, MA: Minda de Gunzburg Center for European Studies, Harvard University, 1998.
39 Moravcsik, Andrew, *The Choice for Europe*, op.cit.: 9.
40 Milward, Alan S., *The European Rescue of the Nation State*, London: Routledge, 1992.
41 Rosamond, Ben, *Theories of European Integration*, op.cit.: 138.
42 Waltz, Kenneth, *Theory of International Politics*, New York: McGraw Hill, 1979; Mark A. Pollack, *International Relations Theory and European Integration*, Fiesole: European University Institute, 2000.

query why the EU – but this was already evident in the days of the EEC and the EC – put so much emphasis on the evolution of a common law and, increasingly, a parliamentary rooting of its decision-making.

Ultimately, intergovernmentalism in all its variants was helpful in explaining the behavioral patterns of national governments as far as their input into the European integration process is concerned. Intergovermentalism was also successful in deciphering the link between the European bargaining of national governments and the effect of social interest groups on national political choices. But it remained unclear why intergovernmentalism became the counter-theory to the one defining European integration as a gradually increasing "supranational" phenomenon. Instead of arguing in an either-or attitude, it would have been more reasonable to consider both theoretical contributions as two intrinsically related elements of a complex web of structures and functions, preferences and interests, implications and modes of bargaining in multilevel policy-making. It is reasonable to perceive intergovernmentalism and supranationalism as the two inevitable and indispensable sides of each federal structure which includes and yet exists above the nation state. After all, a federal structure does not imply the dissolution of either the higher or the lower level of authority, power, and rule. In fact, a political structure can only be named "federal" if it comprises both. European supranationalism requires intergovernmentalism as its corresponding feature – and vice versa – in order to label its basic structure "federal." Otherwise, Europe would be a unitary entity. The simple fact is that it cannot become a unitary entity because it is designed as federal.

Variations of the theoretical debate about intergovernmentalism and its effect on European integration were offered by Wolfgang Wessels and Fritz W. Scharpf, two German voices in a debate with a strong American input. Wessels presented a "fusion hypothesis" to argue that integration dynamics is a process over time in which governments seek integration in order to achieve common goals for shared problems.[43] Scharpf was not enthusiastic about the interlocking nature between governmental decisions and EU decision-making. Joint problems would be resolved, but the outcome was rather sub-optimal as both levels were trapped in the nature of joint decision-making: "The arrangement represents a 'local optimum' in the cost-benefit calculations of all participants that might have the power to change it. If that is so, there is no 'gradualist' way in which joint-decision systems might transform themselves into an institutional arrangement of greater political potential."[44]

Three assumptions were essential to the intergovernmental paradigm: State actors are rational; their principal goal is economic gain; and cooperative arrangements with other state actors lead to conflict-resolution in the context of international relations.

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43   Wessels, Wolfgang, "An Ever Closer Fusion: A Macropolitical View on Integration Processes," *Journal of Common Market Studies*,.35.2 (1997): 267-301.
44   Scharpf, Fritz W., "The Joint-Decision Trap: Lessons from German Federalism and European Integration," *Public Administration*, 66 (1988): 271.

While the rationality, consistency, coherence and tenacity of state actors came under growing academic scrutiny, the economic primacy of European integration came under increasing pressure with the Treaty of Maastricht. Intergovernmentalists described the Treaty of Maastricht as the culminating proof of their theory. The Treaty of Maastricht was certainly a paradigmatic turning point and the undeniable breakthrough of the political nature of European integration. It was no coincidence that it took place simultaneously with the beginning of the reunification of Europe at the end of the Cold War. The pending question about the territorial scope of Europe had always been an additional obstacle for unequivocally recognizing the federal nature of integration as its dependent variable. With the imminent path toward the inclusion of former communist countries in Central and Eastern Europe, another condition for federal Unions was about to be met: clarification of its territorial boundaries. The impact of the Treaty of Maastricht demonstrated the continuously evolutionary nature of European integration, increasingly turning to its original political goal. As Thomas Risse-Kappen, a third German voice in the debate, argued, time had come to reconcile international relations theory with the findings of comparative policy research if any new insight in the character and function of European integration was to be found.[45] Comparative policy analysis was increasingly focusing on the relationship between EU member states and the effects of European integration, but also on the governance character of the established set of EU decision-making modalities.

One of the best and most helpful assessments of the complex nature of European integration was also one of the most simple: William Wallace from the London School of Economics distinguished between formal and informal integration. Formal aspects, he argued, are related to the outcome of integration – such as institutions, policies, legislative changes – whereas informal aspects of integration have penetrated the whole web of political and public interactions in Europe "among previously autonomous actors."[46] Informal transnational activities, not only horizontal between analogous institutions, but also across the boundaries of institutions, have increasingly added weight to the EU decision-making process. The weight of these contacts is difficult to measure empirically as it often contributes more to the necessary consensus-building process about ideas than to the nitty-gritty mechanics of formulating details of legislation. It is however undeniable that inter-institutional relations matter more than is evident if the European Union were only to be measured by the outcome of formal meetings of Council formations, European Parliament sessions or European Council summits. This is true in a vertical sense between the EU institutions and the whole array of national institutions. And it is true in a horizontal sense among the actors inside EU

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[45] Risse-Kappen, Thomas, "Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the European Union," *Journal of Common Market Studies*, 34.1 (1996): 53-80.

[46] Wallace, William, "Introduction: The Dynamics of European Integration," in: William Wallace (ed.), *The Dynamics of European Integration*, London: Pinter, 1990: 9.

institutions, both in a formal and informal sense, and as far as official negotiations and the wide web of unofficial encounters among political actors and between them and representatives of the private sector, civil society, the media and academia are concerned.

3. Integration and Theory In Light of a Genuine European Polity

The academic reflection on the governance quality of the European Union has seen an exponential growth in the aftermath of the Treaty of Maastricht. Finally, a central category of state sovereignty was pooled on the European level. There could be no doubt that the emerging Single European currency was not only an economic event and a sign of "low politics," as academics like to belittle the daily business of European integration. A common currency was a fundamental political act and it required taking the EU more seriously. Relativizing Ernst Haas's 1958 remark about the polity-character of the European Coal and Steel Community, Leon Lindberg and Stuart Scheingold suggested in 1970 that the European Community should be defined as "Europe's would-be polity."[47] With the emergence of the European Union in 1993, those relativistic qualifications could not hold any more. The European Union had become a polity, as Haas had already anticipated in the earliest moments of the path European integration had finally taken.

Lindberg and Scheingold "anticipated the themes of the later multilevel governance literature"[48] and looked into the dynamic nature of the functioning of European integration. They did not offer yet another integration theory. Being influenced by system theory, they developed a concept according to which the political structure of the European Community was not defined by static norms, but by permanent "system change."[49] They connected the "demand" for integration, the existing functional scope of the European Community, its institutional capacities and the degree of systemic support with the politically important issue of leadership. If the details and implications of European integration were properly assessed, academic research would have to look into the notion of "system change." Until the 1990's, European governance was identified as the moveable, independent variable of a process that was still lacking recognition as far as its dependent variable was concerned. But the multilevel governance approach that emerged and finally began to dominate the academic literature on European integration in the early years of the twenty-first century was recognizing the original flexible variable as analyzed in Ernst Haas's theory of neo-functionalism: The European Union was granted the status of a polity in its own right.

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47 Lindberg, Leon N., and Stuart A. Scheingold, *Europe's Would-Be Polity: Patterns of Change in the European Community*, Englewood Cliffs, N.J.: Prentice Hall, 1970.
48 Ben Rosamond, *Theories of European Integration*, op.cit.: 90.
49 Ibid.: 114.

This had multiple implications. It opened research about the actor-ness of the European Union, which is to say its international role and its effect as a genuine actor in international relations. It brought about a variety of insightful studies about agenda setting, policy-making, decision-making, policy networks, delegation and the rational choice-based concept of principle-agent-relationship.[50] It supported the urgency to come to terms with the "democratic deficit" of the European Union, whatever that term meant to different minds. And it required a closer study of the implications of European integration on the institutional and constitutional structures and functions of the member states of the European Union. All in all, academic research on European integration throughout the 1990's was defined by "theoretical renewal," as Ben Rosamond put it.[51]

The focus on governance meant that the European Union was recognized not as yet another international organization operating on the basis of intergovernmental bargaining. In finally recognizing the polity-character of the European Union and its genuine status as law-making and law-executing political entity Italian scholar Giandomenico Majone labeled the EU a "regulatory state."[52] Government bargaining was put in perspective as the European institutions were increasingly impacting the shape of European law and national legislation. As part of the realization of a Single Market, regulatory efforts to harmonize standards, norms and practices became all-pervasive. They added to the regulatory claims in the spheres of competition policies and anti-trust policies. The new consideration of institutional issues in their generic historical evolution by academic research (soon labeled "historical institutionalism") recognized the political dimension of the integration process. Although the European Union had remained primarily a market union during the 1990's, it was beginning to project its claim to also be a political union.

As any other polity, the European Union had become an increasingly complex structure with multiple functions and often idiosyncratic procedures. Academics, who focused on the governance character of the European Union, were confronted with two challenges: Addressing and outlining the complexity, and deciphering the main trends within this complex web. This required studying the institutional development, the decision-making mechanisms, policy-setting, policy-making and policy-implementation, the role of member state governments, of political parties and,

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50   See, for instance, Pollack, Mark A., "Delegation, Agency, and Agenda Setting in the European Community," *International Organization*, 51.1(1997): 99–134; Sandholtz, Wayne, and Alec Stone Sweet (eds.), *European Integration and Supranational Governance*, Oxford: Oxford University Press, 1998; Hooghe, Liesbet, and Gary Marks, *Multi-Level Governance and European Integration*, Lanham: Rowman & Littlefield, 2001; Pollack, Mark A., *The Engines of European Integration: Delegation, Agency and Agenda Setting in the European Union*, Oxford: Oxford University Press, 2003.

51   Rosamond, Ben, *Theories of European Integration*, op.cit.: 98.

52   Majone, Giandomenico, "The Rise of the Regulatory State in Europe," *West European Politics*, 17.3 (1994): 77-101. For a discussion of environmental policies as an expression of the regulatory character of the EU see Kelemen, Daniel R., *The Rules of Federalism: Institutions and Regulatory Politics in the EU and Beyond*, Cambridge, Mass.: Harvard University Press, 2004.

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increasingly, of the European Parliament, of interest groups, of the European Court of Justice, and questions related to the perception of the integration process, notably the role of media in Europe and the effect of public opinion. With the Treaty of Maastricht, the elite-driven character of European integration came under public criticism. Eventually, the academic discourse about the EU's "democratic deficit"[53] was transferred from a scholarly construct in the context of the debate about legitimacy in European integration into a public catchword that was not allowed to be excluded in public speeches by European political leaders of all parties.

In the context of the governance discourse, John Peterson's attempt to structure the decision-making process of the European Union on different levels was most innovative. Each level would require the application of a different theoretical tool to understand it. On the "super-systemic" level, history-making decisions such as treaty revisions are taken. This level can best be understood by the application of macro-theories such as intergovernmentalism or neo-functionalism. On the "systemic" level, EU policy-setting takes place. Here, the insights of "new institutionalism" can best help to understand the operations. On the "meso level," Peterson argued, policy-shaping was at home. Its developments can best be understood by applying policy network analysis.[54] His proposal, said Ben Rosamond, "could be read as an attempt to partition EU studies into a further series of sub-disciplines, each with its prevailing 'normal science'."[55] Such a development would only reconfirm the original recognition of the European Union as a genuine polity requiring multifaceted academic methodologies and discourses in order to grasp the widely spread meaning and impact of its functions. Yet it would remain bound by the parameters of studies of integration functions and would not put in doubt the original assumption that the European Union is a federal union in so far as structure and normative goals regarding the dependent variable are concerned.

The academic study of European integration institutions is not only a matter of penetrating the working mechanisms of constitutionally defined institutions. It also entails reflections on institutions as norms and as norm-setting bodies, both in a formal and in an informal way. Rational choice methods were applied to the study of European integration in order to better understand the "structure-agency" and the "principal-agency" nexus. An important stream of literature dealt with the emerging European policy networks and the increasing meaning of trans-national party structures, economic interest groups and even the role of think-tanks in the European integration process.[56] The focus on policy-lobbying, agenda-setting, policy-making, and policy-

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53 See Born, Hans (ed.), *The 'Double Democratic Deficit': Parliamentary Accountability and the Use of Force under International Auspices*, Aldershot: Ashgate, 2004.
54 Peterson, John, "Decision-Making in the European Union: Towards a Framework for Analysis," *Journal of European Public Policy*, 2.1 (1995): 69-94; Peterson, John, and Elizabeth Bomberg, *Decision-Making in the European Union*, London: Palgrave, 1999.
55 Rosamond, Ben, *Theories of European Integration*, op.cit.: 113.
56 See Boucher, Stephen, et al, "Europe and its Think-tanks: A promise to be fulfilled," *Notre Europe*, October 15, 2004, www.NotreEurope.asso.fr.

implementation could not reach ultimate answers to the most burning questions of all: What was to be the purpose of European integration for the next decades to come and where are the limits of European integration?[57]

Functionalist academic work, dealing with transaction costs, path dependencies, externalization of policies, network communities, deliberative methods of policy-formulation and the like had to come back to the ideational issues that lie at the core of European integration: Europe, why? It was no coincidence that with the study of deliberative methods of preparing political decisions in Europe, and with the focus on policy networks and actor-based models, such as epistemic communities or policy communities, original insights by one social science theory arose again; it returned to the field of European governance studies that had long been forgotten, but had stood at the cradle of the European Economic Communities: The transactionalist or communications approach to international integration. Initially, this theoretical work has been associated with the studies of Karl W. Deutsch and his research team in the 1950's. In the book "Political Community and the North Atlantic Area," Deutsch, a Sudeten-German emigrant scholar at MIT, Yale and Harvard, had argued that successful integration as defined by the absence of violent means of conflict resolution requires the establishment of pluralistic and amalgamated security-communities. Such communities would be defined by three principles: Compatible principled beliefs and values, the capacity of political groups to respond to each others' interests through the evolution of a sense of community, and the predictability of the partner's political, social and economic behavior. "The kind of sense of community that is relevant for integration," Deutsch argued, turned out in the course of his studies "to be rather a matter of mutual sympathy and loyalties; of 'we-feelings', trust, and mutual consideration; of partial identification in terms of self-images and interests; of mutually successful predictions of behavior, and of cooperative action in accordance with it – in short, a matter of a perpetual dynamic process of mutual attention, communication, perception of needs, and responsiveness in the process of decision-making."[58] These thoughts have not lost any of their meaning as far as the search for European constitutional patriotism is concerned.

Deutsch, whose intention it was to establish transatlantic relations as well as to promote European integration, characterized two types of integrated communities. The first type he labeled "amalgamated," meaning "the formal merger of two or more previously independent units into a single larger unit, with some type of common government after amalgamation." The second type he called "the pluralistic security-

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57   See Howell, Kerry E., *Discovering the Limits of European Integration: Applying Grounded Theory*, Huntington, N.Y.: Nova Science Publishers, 2000.
58   Deutsch, Karl W., et al., *Political Community and the North Atlantic Area: International Organization in the Light of the Historical Experience*, Princeton: Princeton University Press, 1957: 36.

community," in which the legal independence of its constituent parts will be retained.[59] Of course, Deutsch could not foresee the development of NATO as a transatlantic pluralistic security community or of the European Union as Europe's "amalgamated" community. But his emphasis on continuous social learning in order to safeguard, transfer and revive the original structures once established has not lost any of its relevance for both the transatlantic community and the European Union five decades after first being formulated.

His work was quite prophetic, and at least premature, if we would apply his general theoretical understanding of social learning processes to the internal dynamics – both formal and informal – that has evolved in the European Union by now. The underlying habits that constitute a sense of community can only be learned, Deutsch noticed, "in the face of background conditions which change only slowly, so that they appear at any moment as something given – as political, economic, social, or psychological facts that must be taken for granted for the purposes of short-range politics. The speed and extent of this learning of habits of integrative political behavior are then influenced in each situation by these background conditions, as well as by the dynamics of the particular political process – the particular movement toward integration."[60] In 1968, Deutsch criticized federalist positions concerning European integration as advocating "premature overall amalgamation."[61] In 1993, with the Treaty of Maastricht in place, the focus increasingly broadened from economic integration to the study of political integration. It was not only about semantics that since the Treaty of Maastricht the name was changed from "European Community" to "European Union." Alberta Sbragia was one of the first to again recognize federalist theory as offering useful analytical tools to understand the new dynamics of European integration. After all, she argued, federalism is "an exercise in institutional creativity … not necessary a replication of existing institutional designs."[62] Surely, the debate on federalism was not over.

With the Treaty of Maastricht and the subsequent development of European Union politics, the issue of democratic legitimacy entered the center of the academic as well as the public discourse on European integration. The summary of the findings of Karl W. Deutsch and his team are still worth considering some five decades later as far as key criteria for assessing future success or failure of the European Union as a federal structure are concerned. The list of Karl Deutsch's criteria for judging success and failure in regional integration included:

- Mutual compatibility of main values.

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59 Ibid.: 6.
60 Ibid.: 37.
61 Deutsch, Karl W., *The Analysis of International Relations*, Englewood Cliffs N.J.: Prentice Hall, 1968: 198.
62 Sbragia, Alberta, "Thinking about the European Future: The Uses of Comparison," in: Sbragia, Alberta (ed.), *Euro-Politics: Institutions and Policymaking the "New" European Community*, Washington D.C.: Brookings Institution, 1992:261; see also Kühnhardt, Ludger, *Europäische Union und föderale Frage: Europapolitik in der Umbruchzeit*, Munich: C.H. Beck, 1992.

- A distinctive way of life.
- Expectations of stronger economic ties or gains.
- A marked increase in political and administrative capabilities of at least some participating units.
- Superior economic growth on the part of at least some of the participating units.
- Unbroken links of social communication, both geographical between territories and sociological between different social strata.
- A broadening of the political elite.
- Mobility of persons, at least among the politically relevant strata.
- A multiplicity of ranges of communication and transactions.
- A compensation of flows of communications and transactions.
- A not too infrequent interchange of group roles.
- Considerable mutual predictability of behavior.[63]

Advocates of social constructivism, one of the most recent brands of theory on European integration, took some of the original suggestions of Deutsch further by referring to "identity-shaping effects on national agents," "shift in actor loyalty," "group dynamics," "social norms," "social mobilization" and "social learning."[64] One of the interesting features underlining the growing importance of social mobilization in the process of European decision-making is the fact that the number of transnational interest groups in Brussels has continuously increased since the founding of the EEC in 1957: Five decades later, 60 percent of around a thousand EU associations had their seat in Brussels, along with 250 European companies with their own lobbying office, and 285 consultancy companies.[65] This is not much compared to 23,000 registered non-profit sector organizations in the US or 1,700 organized groups in Denmark, but it indicates a trend.[66] It might also be a matter of measuring, because more than 10,000 lobbyists were registered in Brussels, although most of them only represent a single company or are their organization's only representative and thus do not qualify as a transnational interest group.

None of the European lobby groups would however have any lasting impact on Europe if their work were not related to the evolution of political institutions with

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63 Deutsch, Karl W., et al., *Political Community and the North Atlantic Area*, op.cit.:58.
64 Thus Checkel, Jeffrey T., "Social Construction and European Integration," in: Christiansen, Thomas, et al. (eds.), *The Social Construction of Europe*, London: Sage Publications, 2001: 50-64; also see Wind, Marlene, *Europe Towards a Post-Hobbesian Order?: A Constructivist Theory of European Integration, or How to Explain European Integration as an Unintended Consequence of Rational State-Action*, Fiesole: European University Institute, 1996; Hermann, Peter (ed.), *European Integration Between Institution Building and Social Process: Contributions to a Theory of Modernization and NGOs in the Context of the Development of the EU*, Commack, N.Y.: Nova Science Publishers, 1999; Delanty, Gerard, and Chris Rumford, *Rethinking Europe: Social Theory and the Implications of Europeanization*, Abingdon: Routledge, 2005.
65 *Frankfurter Allgemeine Zeitung*, "Stadt der Lobbyisten," February 5, 2005: 17.
66 See Peterson, John, and Elizabeth Bomberg, *Decision-Making in the European Union*, op.cit.: 26.

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legitimate decision-making powers. Only through institutions with the power to execute binding law will social norms continue to lead to habits of behavior, to economic discourses and institutional learning, to the ongoing search for institutional balance, and to growing repercussions of European integration within the structures and functions of its constituent parts, the member states of the EU. At the end of the 1990's, the European Commission estimated that about 30,000 participants annually attend meetings organized by the Commission in preparation for legislative initiatives or decision-making.[67] It is not surprising that the majority of them are civil servants from member states. But they contribute to the increasing nexus between formal and informal integration processes.

The functions of multilevel governance in the European polity will evolve in a continuously dynamic interplay with the evolution of the functions, old and new, of the EU member states, its civil societies and its social partners in an exponentially incomplete Single Market. Efficiency and effectiveness of the European Union will remain under academic scrutiny. The results might never be perfect and can only be relational to other possible options of organizing public life in Europe. Markus Jachtenfuchs has argued that the completion of the struggle over the polity-status of the European Union and the paradigmatic shift to governance analysis has two important implications: "It considerably broadens the field of inquiry and invites contributions from other sub-disciplines of political science, most notably from comparative politics, policy analysis and increasingly from political theory." The second consequence, according to him, is "a certain disjuncture between American and European scholarship, with the former focusing on classical integration theory and the latter more on the patterns and transformation of governance." He cites "differing degrees of exposure to the object of inquiry" as the main reason.[68]

This is a debatable argument. So far, most of the influential contributions to European integration theory were written by American scholars, with and without a European background. While the field of research broadens, as Jachtenfuchs rightly says, the range of comparative transatlantic academic research is also broadening. Recent scholarly contributions already give testimony to this potential. They contextualize research about the European polity and about multilevel governance in the European Union in a larger and increasingly unavoidable comparative framework: That of federalism and the prevalence of federal political structures on both sides of the Atlantic Ocean.[69] Comparative constitutional federalism will certainly add to and enrich

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67 Ibid.
68 Jachtenfuchs, Markus, "The Governance Approach to European Integration," *Journal of Common Market Studies*, 39.2(2001): 255.
69 See Lenaerts, Koen, et al. (eds.), *Two Hundred Years of U.S. Constitution and Thirty Years of EEC Treaty: Outlook for Comparisons*, Brussels: Story-Scientia, 1988; Cappelletti, Mauro, et al. (eds.), *Integration Through Law: Europe and the American Federal Experience*, Berlin/New York: W. de Gruyter, 1995; Nicolaidis, Kalypso, and Robert Howse (eds.), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, New York: Oxford University

the increasing literature on "transatlantic governance."[70] It will cover a broader spectrum of issues and developments and by its very nature it will have to be more trans-disciplinary than ever, incorporating the perspectives of legal, economic, political and social scholarship on both sides of the Atlantic.

This might also help political philosophy to be reinstalled in its own right. The recognition of the federal character of the European Union as a category of political philosophy would mean a serious broadening of its perspective. The key terminology of political philosophy and democratic theory has matured parallel to the evolution of the modern European nation state. As the European nation states are increasingly – both constitutionally and habitually – amalgamated with the process of integration under the roof of the European Union, a genuine Europeanized political philosophy is yet to emerge.

It is surprising to see how ambivalent the adaptation of social science theory to new realities of European integration has been. While some academic forerunners have launched paradigmatic revolutions with the formulation of a new, mostly normative conceptual framework for the understanding of a given stage of European integration, others have been working on this paradigm way too long and were taken over or at least absorbed by a new stage of integration, which in time produced a new scientific paradigm as to how to assess this new stage of reality. However this cannot be a particular charge against academic contributions to understanding European integration. Often, also the actors who shape European integration have difficulties in staying their course, changing gears or refocusing the whole operation. Therefore it remains highly important to distinguish between the function of integration and its structure. The academic function will always be contingent on changing rationalizations, challenges, responses, priorities and crises. Academic literature reflected these trends throughout the first five decades of European integration. The federal structure and purpose of European integration was often invoked, either with energizing or skeptical intentions. Yet it succeeded in remaining constant and finally has become the "dependent variable" of European integration. In the meantime, the European Union is becoming what the Treaties of Rome initiated when they outlined the prospect for "an ever closer union": a European federation of unity in diversity.

Press, 2001; Fabbrini, Sergio, "Transatlantic Constitutionalism: Comparing the United States and the European Union," *European Journal of Political Research*, 43 (2004): 547-569; Gehler, Michael, et al. (eds.), *Towards a European Constitution: A Historical and Political Comparison with the United States*, Vienna: Böhlau 2005.

70   See Pollack, Mark A., and Gregory C. Shaffer (eds.), *Transatlantic Governance in the Global Economy*, Lanham: Rowman & Littlefield, 2001.

In spite of rudimentary beginnings, of detours, periods of stagnation and ever present crises, the process of European integration has advanced considerably since the signing of the Treaties of Rome in 1957 and the formal beginning of the European Economic Communities on January 1, 1958. More than fifty years of experience with the growth of European integration has been a continuous experience with expanding functions, changing ambitions and creeping, yet inescapable effects. The structural analysis of its functions was part and parcel of the integration process. Yet it was a structural assessment of functions and not of its foundation. Functional analysis did cover a wide range of issues – including ideas about integration goals, its method and its effects. It stretched into all possible policy spheres and finally approved the European Union as a polity, a body politic. Functional analysis also asked about the norms guiding the process, the principled belief of integration actors, the meaning of ideational memory, and the like. As Risse-Kappen put it: "If we want to understand the processes by which norms are internalized and ideas become consensual, we need to leave behind the logic of rational utility-maximizing actors, and incorporate the logic of communicative action."[71] Yet even this necessary change of perspective was mainly functional and followed functional intentions. It is no tautology to say that functionalism was the starting point of integration research because the starting point of integration was itself functional. Within the parameters of this technical approach to integration and the academic reflection about it, the notion of the underlying political structure was left outside the purview. So many actors and analysts alike were struggling with the notion of federalism because they confused structure and function. They tried to influence or explain functions of integration and their consequences by adding or preventing the addition of a label – "federal" – that neither explains these functions nor preempts the need to discuss it as a constitutional design "to indicate a number of devices which have, as their general object the relegating of certain subjects to the central government, and the leaving of other subjects to the state government," as one of the speakers in the Australian constitutional debates said.[72] No matter whether or not it is consensual to label the institutions of the European Union "government," de facto they constitute a centralized political regime. It is a polity with legally-rooted authority in norm-setting, consolidated power in norm-implementation and delegated yet stratified rule over the 491 million citizens of the European Union.

It has been a sad intellectual self-blockade of European integration theory to relate the idea of federalism only to the notion of the modern nation state. Federalism as concept and reality is a much older social and intellectual reality than the nation state. The nation state will not disappear because of supranational federalism. Nor can the

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71 Risse-Kappen, Thomas, "Exploring the Nature of the Beast," op.cit.: 69.
72 Cited in Forsyth, Murray, "The Political Theory of Federalism," op.cit.: 31-32.

nation state remain the same with the consolidation of supranational federalism. Both experiences have been established in Europe. This is exactly the reason why functional research has defined the functional outcome of the process of integration, establishing the European Union as a polity and the mechanisms of the internal structure of the functions of the European Union as multilevel governance. None of this, however, undermines, eliminates or redefines the structure in which the European Union exerts its manifold functions. By measuring it with the help of established criteria emanating from the history of political ideas, the European Union must be called a federal structure.

Murray Forsyth has introduced three theoretical approaches to federalism. The first one, best expressed in Immanuel Kant's 1795 essay "On Perpetual Peace," is a moral theory of federalism. Kant's concept of a federal union of republics in Europe was based on his normative proposition to eliminate the root causes of war. The second stream of federal thought relates the federal structure among units of authority, power and rule with the idea of popular sovereignty and participatory self-rule. Authority, power and rule ought to be as close to the people as functionally advisable and possible. This was the thrust of thinkers as diverse as Jean-Jacques Rousseau, Pierre-Joseph Proudhon, the Anti-Federalists, and Pope Pius XI, who established the catholic social doctrine's principle of "subsidiarity" in his 1931 social encyclical "Quadragesimo anno," authored by the German Jesuit Oswald von Nell-Breuning in face of growing totalitarian and centralizing tendencies in many states of Europe.[73] The third current of thought is related to the work of the authors of "The Federalist Papers," promoting the adoption of the American Constitution drafted in Philadelphia in 1787. Forsyth credits Alexis de Tocqueville as having introduced this first concise theory of political federalism into European thought with his 1835 book on "Democracy in America." Political federalism, according to Forsyth, is simply "a phenomenon produced by the pulls and pressures of the political world, with its own logic distinct from that of the unitary state or the world of international relations. Here, federalism is the ensemble of structures and processes whereby a union of states or a union of polities is created and sustained, whether such a union results from a unitary system disaggregating itself, or from a number of political units coming together, or from a simultaneous movement in both directions."[74]

A federal union has to be characterized by arrangements that draw a line between insiders and outsiders – as the EU exercises its concept of European Union citizenship – with a permanent set of institutions – as the EU practices – and by an explicit will to go beyond conventional, treaty-based cooperation. A Union, he argues, has to be constitution-based in order to be called a Union. "The union," Forsyth argues, "does not abolish the constituent members, but rather exists alongside them." However, their right

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73 As for the difficulties to implement subsidiarity in the EU see Wakonen, Jouko, *Implications of Federalism and the Principle of Subsidiarity in the Case of Science and Technology Development in Europe*, Turku: Turun yliopisto, 1995.

74 Forsyth, Murray, "The Political Theory of Federalism," op.cit.: 35.

to act internally and externally is "retained in certain spheres." This is equivalent to what Calhoun has labeled "reserved powers" in the context of US constitutional history. Its effect constitutes a union that "implies the co-existence of two such discretionary legislative powers, one at the center, one in the parts."[75] This analysis can also be used to characterize the European Union.

That fact that it is a federal union does not mean that the European Union must – or should – ever become a federal state. But its character as a Union makes the EU a federal entity. The debate about the term "federal" has often been heated among European actors and analysts alike. One of the reasons is misunderstanding and confusion about structure and function as related to the use of the term "federal." It is a semantic battle. In the German political tradition, "federal" means the rights of the constituent parts of a Union to uphold their prerogative, reserved rights. Therefore, the idea of European federalism resonates positive German experiences. In the British (or, for that matter, American) political tradition, "federal" means centralization at the expense of the constituent parts. Therefore the reproduction of the American experience in Europe is anathema to many British observers (and not only to British observers). But the semantic battle, de facto, is more than a semantic one. It is also a battle over limits of power, delegation of authority and the scope of rule. It is a genuine political battle. In fact, the term "federal" and the notion of federalism are often used to propagate or prevent certain concepts and policies directly related to the scope and limits of authority, power, and rule. The semantic component is relational to the political core of the debate. In fact, it is of secondary importance. It has nothing to do with the analytical core of the assessment that a union must be a federal structure in order to be a union. The British debate about the "f"-word is proof of the inherently federal character of a union that can, of course, be in endless disagreement over specific variants of authority, power, and rule without losing its structurally federal character.

The recognition of the European Union as a federal structure makes it easier to contextualize the functions and modes of operations of its institutions. Instead of remaining trapped in the old dichotomy between seemingly irreconcilable notions of intergovernmentalism versus supranationality, it will be analytically helpful to assess institutions of the EU as functional under the overall structure of a Union. This is, for example, relevant for the perception of the role of the Council. Often, the Council is considered an intergovernmental institution, almost naturally in opposition to the supranational institutions, European Commission and European Parliament. If that dichotomy would hold true, nobody could answer why EU member states have never curtailed and cut-back the legitimate power and authority of the European Court of Justice.[76] De facto, it is the most powerful authority that can rule on institutional and

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75   Ibid.: 38.
76   See Frey, Bruno S., and Reiner Eichenberger, *The New Democratic Federalism for Europe: Functional, Overlapping, and Competing Jurisdictions*, Cheltenham: Edward Elgar, 1999.

even constitutional matters both horizontally among EU institutions and vertically within the member states of the European Union. The European Court of Justice, as Liesbet Hooghe and Gary Marks summarized it well, "does not merely act as an agent in adapting member state agreements to new contingencies. Through its rulings, it has engineered institutional changes that escape, and transcend, treaty norms. Supranational authority in the ECJ deepened from the 1960's, as a result of Court rulings, not because of treaty language. The constitutionalization of EU treaties is the product of Court activism, not of national government preferences."[77]

The reason for not trying to cut back the role of the European Court of Justice is rooted in the nature of the political character of integration politics. As in any law-based, parliamentary and democratic federal union, the actors assembled in the Council – and also those assembled in European Council summits, which is also a federal EU institution and, like the Council, is supported by a huge secretariat in Brussels that in turn is often asking the EU Commission, operating across the street, for support[78] – advocate political solutions, and if necessary, changes instead of redefinitions of the powers of the European Court of Justice. They recognize the law-based character of the European Union as a political federation. Yet, each of them – and as an institutional composite – considers law-making the political right of the Council. As much as this right is executed in co-decision with the European Parliament, conflicts of interests and battles over content and outcome of political bargaining are among the most normal events in a democratic parliamentary political system. The Council, Forsyth concluded, does "express an authentic federal principle, which is realized in all federal unions, whether in the form of diets, congresses, senates, or even conferences of premiers, namely the representation of the member units at the center of the union."[79]

The evolving extension of qualified majority voting in the Council underlines its character as a part of the federal structure of the EU. The EU is limiting rule not through the principle of separation of power, but the principle of interlocking powers. The proportion of unanimous votes in the Council has steadily decreased: from 49 percent under the Treaties of Rome to 45 percent under the Single European Act, to 35 percent under the Treaty of Maastricht. It rose again to 37 percent under the Treaty of Amsterdam, while with the Constitutional Treaty (and the subsequent Reform Treaty) this figure would have gone down to 28 percent.[80] The Luxembourg Compromise of

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77 Hooghe, Liesbet, and Gary Marks, *Multi-Level Governance in the European Union*, op.cit.: 11.
78 It is interesting to note that according to an internal accounting of the European Commission in 1998, only an estimated five to ten percent of legislative proposals were created immediately inside the Commission. 35 percent of legislative proposals were the result of international treaty obligations, 25 to 30 percent amendments to or codifications of existing law, 20 percent requests from other EU institutions, national governments or interest groups and another ten percent obligations stemming from prior treaties: cited in Hooghe, Liesbet, and Gary Marks, *Multi-Level Governance in the European Union*, op.cit: 13.
79 Forsyth, Murray, "The Political Theory of Federalism," op.cit.: 40.
80 See Maurer, Andreas, *Die Macht des Europäischen Parlaments: Eine prospektive Analyse im Blick auf die kommende Wahlperiode 2004-2009*, Berlin: Stiftung Wissenschaft und Politik, 2005: 34.

1966 is often cited as the quintessential manifestation of the intergovernmental character of the structure of European integration. But also the Luxembourg Compromise was a transient phenomenon. Between 1966 and 1981, it was invoked less than a dozen times in order to block a decision by claiming vital national interests that made unanimity indispensable. The Luxembourg Compromise was invoked for the last time in 1985.[81] In other words, since then qualified majority voting or informal decisions based on gentlemen's agreement are the rule.

Technical-functional and federal-constitutional aspects of the European governance system are intrinsically linked and mutually impacting each other. Yet they are distinct analytical categories and describe different realities. Academic research will have to focus more on the dimensions that give life and meaning to any federal union: Matters of authority, power and rule. This includes, for instance, studies on the role of individual Commissioners, on Parliamentary Committees or the parliamentary factions in their interplay with national political parties. Although the European integration process has always been a highly political process, such quintessentially political questions have not found exhaustive attention in past academic considerations of European integration. As methodological and normative guiding devices, they must support research on policies, decision-making methods and administrative components of the European Union.

Unlike in the United States, the role of the executive – that is to say the government – is strong in most European countries. European governments are normally also stronger vis-à-vis their parliaments. Nobody would question the structure of, for example, German, Austrian or Belgian federalism because of this form of separation of power. It should therefore come as no surprise that the European Union also practices executive-dominant federalism. Another consequence of the European diversity and its overly pluralistic societal structures can be detected in the European revision of the classical notion of separation of power. Ironically, the European Union practices this longest standing principle of democratic theory exactly in the reverse order of the original proposition by Locke, Montesquieu and others: The European Union is a polity based on mutually interlocking powers. No law of nature has ever postulated that its effect might be different or less legitimate than the idea of an aseptic separation of powers, which is hardly practiced in any country in the world.

Federal structures will always vary from each other. Yet, the fundamental reasons in favor of this pluralistic arrangement for the practice of authority, power, and rule are constant: Fostering peace, promoting economic prosperity, protecting diversity, facilitating joint commitment, projecting stability and enhancing the joint influence of the constituent parts of the federation. There will always be discussion and dispute about the appropriate degree of how authority, power, and rule are distributed in a

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81 See Hooghe, Liesbet, and Gary Marks, *Multi-Level Governance in the European Union*, op.cit.: 17-18.

federation. An efficient maximization of preferences cannot take into account only short-term gains, the time allocated to reach agreement and decision, and the legitimacy of input and of output factors as far as the process of agenda-setting, deliberation, policy-formulation, policy-decision and implementation is concerned. Academic research on "fiscal federalism" tries to identify the optimal allocation of authority, the organization of preferences and the distribution of resources.[82] Unitary political structures might always be advantageous as far as speed and implementation of norms and law is concerned. This cannot serve as an argument for strengthening the central decision-making and norm allocation in the European Union. Neither is it a protective argument for any of her constituent member states to advocate national primacy on principle. As far as the crucial indicators for a successful political entity are concerned, a continuous balancing of options will prevail. Loyalty of EU citizens will remain the primary source of stability. Only dynamic economic trends and the application of the principle of subsidiarity will enhance the allocation of authority. Only an inclusive yet normative and attentive democracy will be able to cope with the challenges of cultural diversity and normative pluralism. These are some of the topics to which research on European governance will have to direct itself.[83] They are relational as are all topics of democratic theory and order-building. The more the focus of research is directed toward the question of how the European Union deals with such challenges, the more the European Union will be characterized as an ever-stronger normalcy among the states and nations in Europe and within the global community.

In light of the missing consensus about the recognition of the European Union as a federal union, it is astonishing how far the empirical integration process has come. This nurtures the suspicion that the structural concept of federalism also has a tactical and thus a functional meaning. It is used in favor or in outright rejection of specific policies, methods of bargaining or conflict-resolution that might not only give an answer to a genuine matter of dispute, but also can change the parameters of power, authority and rule. The "empty chair crisis" between the France and her partners on the European level of multilevel governance was an early example. The "rebate debate" between the European level of multilevel governance in Europe and Great Britain was another example. The dispute about the weighting of votes in the Council between different European countries, with France and Germany in the leading veto seat, was a third example. None of these prevented the European Union from gradually and consistently constitutionalizing itself. The ultimate test case of EU recognition and legitimacy will not stem from the coherence of its basic treaties. The ultimate test case of recognition

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82 See, for instance, Stehn, Jürgen, *Towards a European Constitution: Fiscal Federalism and the Allocation of Economic Competences*, Kiel: Institute of World Economics, 2002; Baimbridge, Mark, and Philipp Wyman, *Fiscal Federalism and European Economic Integration*, New York: Routledge, 2003.

83 See Follesdal, Andreas, "Federalism," op.cit: 7-8.

will be the degree of loyalty EU citizens express. Their sense of ownership – or the lack of it – will remain a "plebiscite de tous les jours," permanently mirrored and measured by results of Eurobarometer and other opinion polls. But it will also need to be studied through more long-term trends, voting patterns included. Backlashes remain inevitable, but each new achievement will reinforce the original promise of a new order for Europe through peace and freedom, affluence and solidarity, open to the world and ready to again shape the global order with the means acquired by the EU. Over time, this complex, contradictory and ever incomplete process will reinforce the "federalizing tendencies" Carl Joachim Friedrich had in mind when he called for a paradigmatic change in the study of European federalism that finally has come full circle as the European Union has matured into a federal union.

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Prospects