POLITICAL INSTITUTIONS FOR AN EU FEDERAL CONSTITUTIONAL TREATY

- The Commission –

By

Laura Valeria Gheorghiu

Submitted to
Central European University
Department of Political Sciences

In partial fulfillment of the requirements for the degree of
Master of Arts in Political Sciences

Supervisor: **Professor Anton Pelinka**

Budapest, Hungary
2008

Contents

"In the political and economic separation in which it finds itself, is Europe able to defend its peace and independence towards the great non-European powers who are expanding now or it will be forced to organize itself in a federation of states, in order to save its own existence?"
    - Richard Coudenhove Kalergi, *Pan-Europe*, 1923 -

"What is the sovereign remedy? It is to re-create the European Family or as much of it as we can, and to provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe."
    – Winston Churchill, 1946, Zurich -

"Among peoples who are geographically grouped together like the peoples of Europe there must exist a sort of federal link."
    – Aristide Briand, 1929 –

"We wish a great federation of free peoples, we believe in the nations' pact, in the European Congress which will interpret in a pacific manner this pact. But nobody will be able to fraternize in that pact, nobody will gain a seat in that Council of peoples without having its proper, organized life, without being constituted in a national individuality."
    – Giovanni Mazzini, 1948 –

"And, once the horizon of the old Continent is superseded, and all the peoples who make up humanity are included in a single design, it will have to be recognized that the European Federation is the only conceivable guarantee ensuring that relationships with American and Asiatic peoples will work on the basis of peaceful cooperation, writing for a more distant future when the political unity of the entire world will become possible."
    – The Ventotene Manifesto, 1941,
      Altiero Spinelli and Ernesto Rossi –

Chapter I: The European Union and the Federal Project

1.1. Introduction

Built on the ruins of its own history, culminating with the Second World War and facing the Cold War, the European Community (later, Union) had to be the proper reply to many questions and challenges, more or less clear at the very beginning, more or less contested, but also hard – if ever possible – to be avoided. For the first time, the European continent had to design a multicolored picture, meant to find a room for everyone and, in the same time, to define (defend) its own identity. How to bring and keep together people with such a painful memory of fighting and disagreements proved to be the main homework for its "fathers", lawyers and economists altogether. How to preserve and emphasize the local specificity simultaneously with building supranational bridges towards an aim that many are still afraid of – this question was and has still remained a challenge for the community. But "the world history owns much more fantasy than its puppets and consists of a chain of surprises generated by the fulfillment of some utopias. If an idea is to become a utopia or a reality depends of the number of forces supporting it. As long as Pan-Europe is supported by a few thousand persons – it is and will remain a utopia; when millions will believe in it, it will turn into a political program; when hundreds of thousand will adhere, it will come into being." [1]

With little if any incentive to face the real status of each one's country – not to mention the profile of the entire Europe in the contemporary global picture - the European leaders are very much reluctant to any kind of essential reform of the Union, preferring the well known cliché of a *sui generis* unit, that keeps the whole process in an undefined status. While almost a century ago, Coudenhove Kalergi [2] warned that the past-ridden orientation of the Europeans was

[1] Richard Coudenhove-Kalergi, *Pan Europe*, 1923/ 1997, Vienna/ Tg. Mures: Pro-Europe, page 13;

[2] "Europe looks backwards, instead of aiming forward. The book-market is full with memories. In the public debates, the facts of the recent war enjoy a larger space than the preoccupation to prevent a new conflagration. This continuous part-orientation is the main cause of the European present regression and of its internal separation.", Richard Coudenhove-Kalergi, 1997 , page 10;

leading to a general decline of Europe's global role almost nothing could question or remove this search for legitimacy in the glorious pasts, despite of all the tragedies of the XXth century. On the contrary, there is still a lack of consensus with regard to the profile of Europe-to-be, balancing mainly between the almost classical project of a complete federation and an intergovernmental cooperation, expected to protect the integrity of the national(istic) path(s) and tools.

If one would try to question this issue from a broader perspective, he would face the ontological question: is there a European community already existing and waiting for us to re-built it or, we have to 'invent' something new? "You wouldn't have looked for me if you haven't had found me!" would have been God's reply in a hypothetical dialogue with Pascal. If we can say the same about Europe (and there is no rule to stop us) than, we may further ask: where is this Europe? And why are we still in doubt if we have already found it? "Your soul is no longer free, since it felt into your body and you should cross the whole experience of *anamnesis* to uncover the effects of your forgetfulness. You should look for it with your soul, not with your body!" would Plato advice us. And he may be right, since the majority of 'definitions' that have been given to Europe are formulated in spiritual terms and not as a quantitative description. "It is obvious that not everybody can clearly perceive Europe's reality, since Europe is not a <thing>, but equilibrium."[3] Of course, as any dynamic issue, it may be not a perfect equilibrium. It may be just a Pareto-optimum… It may be the only reply that the Europeans can give to their historical projects in a given moment. On the other hand, is there possible to speak about a continent that had already witnessed so many wars to represent equilibrium? Does the war represent means to preserve and to (re) create equilibrium? Is it a means by which the system is protecting itself? If so, is there any reason to avoid a war? Can we think about all our contemporary institutions as being means to reformulate the war terms and solve the controversies in a new way? After all, is it the same story expressed in different *languages* and this tension the one that keeps a body alive and provides it from time to time the energy to continue its life?

Ortega y Gasset remarked that the European, continental nations "have remained in their intimacy without future, with no projects for their future, without creative aspirations. They have placed themselves in a defensive attitude and, of course, in an insufficient defensive one."[4] And the main problem is not that they should be part of an armed war, but they should continue

[3] Jose Ortega y Gasset, *Europe and the Idea of Nation*, (Europa Y la Idea de Nacion, 1966, Madrid: Revista de Occidente), 2002, Bucharest: Humanitas, page 98;
[4] Ibid., page 13;

questioning and transforming themselves in order to keep the trend and even overcome it, to struggle for an up-dated version of their identity and definition, for each one's position among the other nations. Now, after two world wars and a cold one, the European nations are tired. "They have locked themselves in their homes and put their slippers."[5] This is why, they don't seek to generate a new paradigm, they are not looking hard for some lasting arrangements, they don't seem to be concerned of major politics, but of daily governance and satisfaction. They have entered the age of foxes – in Pareto's terms – and seem uninterested of any lion to push them forward in their path. "There would, perhaps, be a federator, but he would not be European."[6]

Since we are still looking for Europe, since the states have already agreed to transfer part of their sovereignty to the supranational institutions, and since they still do not reject the idea – although the rhythm of embodying it is very, very slow - we ought to listen again to Plato's advice and learn that Europe is not a concrete thing, but something we have to discover with other kind of eyes! "A certain form of European State has always existed and there is no people who did not feel its pressure, sometimes terrible coming from it. But that supranational or ultra-national State has had very distinct figures from those that had been adopted by the national State. "[7] It has always been a certain kind of community and a feeling of belonging to a given type of civilization, and this feeling came to be very much emphasized by the contacts with other civilizations. "The Europe constitutes itself, because what is common to all Europeans gains importance in contrast to what separates them, due to a non-European humanity which is very strong and very near."[8] Although written about a century ago, this thought is of very much adequacy with our times: the aliens, the global environment, the threatens who seem to be bigger than the possibilities of a single state to solve them, even the tiredness to reply promptly to all the contemporary challenges, all these make the Europeans – with or against their will – to come together and try to rediscover their common roots (in Bronislaw Geremek's terms) and their

---

[5] Ibid., page 25;

[6] Charles de Gaulle, *Speech*, 4th January, 1963, at www.spartacus.schoolnet.co.uk/2WWeuropeunity.htm, accessed 4/20/2008; in the same paragraph he is deploying the absence of a European federator, with enough "power, reputation and ability" to do it, suggesting that only "an outsider who had a policy" can be expected to do it.;

[7] Ortega y Gasset, 2002, page 96; In the same idea but somehow very much helping us to think about a possible double citizenship in the European Union, Ortega said: ""The European man has always lived, in the same time, in two historical spaces, in two societies, one being less dense, but wider, namely Europe; the other denser, but territorially reduced, being the area of each nation or of the limited places and regions that have preceded, as particular forms of society, the present day big nations." - page 44;

[8] Herman Keyserling, *The Spectral Analysis of Europe*, 1993, Iasi: The European Institute, page 301;

common destiny. The European history proves to be the platonic *body* in which the European *soul* had fallen and from which we are to extract it and bring it back to life.

In this paper – backed by huge dreams and limited by formal requirements – I will try to advocate for a federal Europe, as a result of my belief that what is united had to gain a roof and a shelter, a proper house to feel familiar and free, inside of it. Not an ideology coming to cover things, not a narrative to persuade people or a dream to close the eyes! I believe that a federal arrangement for Europe is the hidden *form* in the marble[9], which the European politicians have to discover and free. After a short presentation of the federal structure's demands, I will try to argue for such an arrangement as being the best for Europe. In such a theoretical perspective, I will bring some examples of European and non-European federations, in order to describe their governing institutions and power-relations in domestic affairs and, trough this operation, I will try to find out which of the patterns is best suited for Europe – if any. After having learnt the lesson, I will go back to European Union, to check its main institutions and see is they display a federal relation. A special focus will be on the European Commission, in my concern to design it as a real executive of a federal Europe. Is it – legally, organizational, political - prepared? How far is it from a federal project? Are the Europeans in the position to postpone the fulfillment of a federal dream?

Since this is a theoretical paper, all the involved methods will be in accordance, with a special emphasize on comparisons, coding and deduction. In the first stage, I will try to extract from the bibliography consisting of theories on federalism and the power arrangements acting in such cases, the "definitions" of executives. There may be several such "definitions", but they all vary around an expected optimum variant. Therefore, by coding, I will try to obtain these optimum formulas as well as the reasonable alternatives.

The comparative approaches will be very important to find how the above formulated definitions really work in concrete countries: Switzerland (a more/less "ideal type" for Europe, given been the differences in size and diversities); India (perhaps the most appropriate case, although the *collective memories* make the difference); Germany (as the largest federation inside the EU and also a source of inspiration for many European Union's projects and arrangements)

---

[9] Of course, the suggestion I made here follows Aristotle's explanation of one of the four causes acting in the nature. The form is inside the material, and we are the ones supposed not to invent a form, but to discover the inner, natural form and help the material become what it is to become.

and the US (as a former pattern for the United States of Europe). These comparisons will enlarge the "definitions" especially with regard to variants and adaptations to reality, and will show the strengths and the weak aspects of the European Commission's portrait.

The historical narrative will trace back to the Treaty of Rome, in order to find out if the European Union's institutions have been projected as federal ones from the very beginning or only in the later treaties (if any). It will be interesting to see the moment they have been endowment with federal issues to see what proper conditions emerged at that time. Induction will fulfill the task of drafting a proper structure for the Commission, by identifying the common aspects in all these variants and making the decision upon the (presumable) best of them.

There are also some already foreseeable limits of this thesis! For instance, the Parliament and the Council should be studied in parallel because they form a zero-sum game. However, the "solution" of turning the European Council in an Upper House of the Parliament is already so much discussed that I consider it is the time for it to move towards a political decision rather than remain a topic for scholarly analyses. The Court of Justice is a very attractive topic, as well, but it already works as a supranational Court, with little changes to be made towards a Supreme Court and/ or a Constitutional one. The Committee of Regions is very attractive for me and I suspect it will seriously challenge the importance of the European Council on medium (perhaps long term). But in that case, it the study looks more like a program/ project than a thesis and I want to keep this text inside its academic demands. This is why, I decided to restrain my paper to the Commission, with the whole regret of not being in the position to speak about the other main institutions and provide an over-all picture.

Of course, I am aware of the fact that institutions are just tools of a given structure, signals that the community opted for a variant or other. But they can influence very much the political decisions trough their everyday activity, they can push things in a direction or other – and, perhaps – they are now, above all the history, the most convincing lobbyists for an option or its opposites. This is, perhaps, some sort of neofunctionalist approach! However, we can not separate institutions from the structure they have to support, but also the structure – if it is a dynamic one - will have to adapt to the institutions that support it.

The Council of Europe held in Hague, in 1948 concluded only in favor of a United Europe[10], with no reference to the possibility of federation but everybody knew that this structure ought to be the final stage. It was clear that as soon as the idea of Europe would have been back in the agenda – the debates will center on the means, the depth, and long term effects of such a political decision. As Chancellor Konrad Adenauer put it: "the political meaning of the European Coal and Steel Community is infinitely larger than its economic purpose. Something further has resulted during the negotiations. I believe that for the first time in history, certainly in the history of the last centuries, countries want to renounce part of their sovereignty, voluntary and without compulsion, in order to transfer the sovereignty to a supranational structure."[11]

The shape and the functioning of this structure has generated half century of debates and analyses, not only on academic grounds, but in economic, constitutional and security perspectives. Since a regional organization can limit its program to a specific number of items, the European Unity was to become much more than that. And there is a whole history of philosophy and natural sciences proving that the sum of some issues never equals the whole they may represent at a given time.

1.2. Federalism or Intergovernmentalism[12] ?

"The borders are now permeable,
sovereignties are nominal,
the power turned to be anonymous
and its place in the space got lost."[13]

In this respect, the first question we have to face is to decide if we want to have a viable whole or some parts inter-acting in various ways, according to the circumstances and their changing demands. In the first case, we may have some day 'a phone to call for Europe' (as

---

[10] "We desire a United Europe, throughout whose area the free movement of persons, ideas and goods is restored." – *Message to the Europeans,* adopted in Hague, 7-11 May, 1948, The Congress of Europe, written and read by Denis de Rougemont;

[11] Konrad Adenauer, *Speech*, 12th July, 1952, from www.spartacus.schoolnet.co.uk/2WWeuropeunity.htm, accessed 4/20/2008;

[12] We do not intend to make here a literature review on this enormous topic. It is not enough space and, after all, not our interest! All what we need is just to point the main differences between these two perspectives that shape the European debate and politics and which determine the agenda, the rhythm and the quality of EU's existence.

[13] Claus Offe, quoted by Zygmunt Bauman, *Globalization and Its Social Effects*, Polity Press/ Bucharest (missing year), page 69;

Henri Kissinger suggested years ago); in the second variant, the states would go on claiming they have remained independent and they have preserved their whole sovereignty. "We find ourselves in the agony of a world that does not succeed to get born, because we find ourselves in the agony of a world that does not succeed to die. We do not know if, finally, it will be the agony of death or that of birth. We do not have a foreseeable future, any longer"[14]. Behind any definition of sovereignty, there is a need to have one's own phone number and identity. To what extend are/ will be the states disposed to cede part of their identity? To whom? On what expenses? Is there a general rule to be followed or denied? Is there a dominant paradigm to surrender? Is there any agreed perspective to guide all the actors in this labyrinth? It does not look like that!

Behind all the disputes it seems we still preserve the initial question of primacy, in a revised version: are there the states or the non-state persons, the main actors in the present day scene? In the first approach, we need to join the chain of realists – neorealists – intergovernmentalists, supporting the idea that the whole story is about sovereign states acting rationally in a more or less anarchic environment, in which they aim to pursue their particular interests. The other path, namely of non- state persons is looking for a certain structure – be it a state or something else - to protect and support their demands in a more and more complex world. What is amazing and challenging, in the same time is the fact that both groups speak about freedom and self-determination; both seek for some sort of support, domestic or not; and both attempt to shape a regional cooperation in Europe.

The European states have acknowledged a long history, most of which being written in tragic terms. People have fought for them and had died in the name of such constructions. They are both sources of pride and of horror. Can we still suppose that the main actor in the present time remained the (national) state? If so, is it a good situation or something we have to replace with a more adequate solution? The intergovernmentalists[15] claim that all is about bargaining between the states in their attempt to obtain external support and minimalise negative externalities with respect to domestic policies. According to them, the states are rational actors, pursuing exactly the aims they intend to meet and thus, avoiding any unintended policy[16] to influence their programs. These kinds of actors prove to have nothing subjective, accidental or

---

[14] Edgar Morin, *Penser l'Europe,* 1987/2002, Gallimard / Bucharest: Trei, page 172;
[15] Among them, perhaps the most notorious now, is Professor Andrew Moravcsik, whose ideas we will briefly present here.
[16] As the (neo)functionalists have emphasized all the time!

surprising in their everyday life! All the decisions are rational ones, taken in accordance to a two level procedure: "governments first define a set of interests, then bargain among themselves in an effort to realize these interests."[17] Even the persons who are direct part of bargaining do not speak on their behalf, but they represent a whole bureaucratic structure and synthesize the interests and the incentives of this structure. In the final analysis, the politicians are described here as simple mechanisms who support an already made idea[18], since they wish, at their turn, to keep their position or, to be re-elected for it. Since they have a domestic mandate to speak for a given solution, they will not dare to free ride. Here is the typical hierarchical structure, in which the leaders are nothing else but the product, the essence, the public expression of a system. They can not defect, because the system is self-protecting and will get rid of them. Therefore, they support the system that supports them.

In this point, we may ask: is there any room for innovation and change? For personalities or vision? Of course, not. I should say that any bureaucracy has the tendency to keep things in an already experienced pattern, with already known rules and un-debatable decisions. Any bureaucracy has a large amount of supporters of one kind or other: providers of subsidies, of votes, of image, whom it will try by all means to satisfy, whatsoever. Such a state acting like a whole (reminding of methodological holism) will always preserve a certain status-quo[19]. Therefore, in terms of changing something in the international arena or joining a regional arrangement, they will be reluctant and will raise very many blocking questions. However, "national governments have an incentive to co-operate where policy coordination increases their control over domestic policy overcomes, permitting them to achieve goals that would not otherwise be possible."[20] And this will make them more vulnerable to the desires of the other states or actors. The more rigid a certain actor is – in terms of restricted number of options and fields to perform – the more abused will be by the others who will manage to persuade, promise and manipulate them. In this way, the 'rational actor' will try to fulfill the domestic expectations by 'negotiating' in the international arena what the others already expect him to ask for, or even induced him to ask. In any possible case, it will not be the given state to list the conditions and to set the price, but to accept and surrender. This is the autonomy of any rational actor: having to

---

[17] Andrew Moravcsik, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, 1993, Journal of Common Market Studies, Volume 31, no. 4, page 481;
[18] Shall we call it a "ready to wear" idea?
[19] "The primary interest of governments is to maintain themselves in office.", idem, page 483;
[20] Idem, page 485;

perform within pre-determined limits and with respect to a clear expected result, they will be easy victims for any other partner who will want to take advantage[21].

Nevertheless, "there are no perfect sovereign states, but only states who serve one the others, equal and independent states, who are conscious that even their life, their improvement would be impossible if they would not be ready to serve each other."[22] As a consequence, during the bargaining process, the states will make concessions to each other and will try to accommodate their interests in order to gain external support for their domestic issues.[23] The more they will cede from the domestic requirements, the more they will risk at home. On the other hand, the more they will not cede the less chances they will have to get their partners' support. Therefore, we may say that the degree of freedom that these leaders enjoy represents the extend to which they decide to risk and they manage to deviate from the initial agreement. "But working more closely together does not require power to be centralized in Brussels or decisions to be taken by an appointed bureaucracy."[24] This opinion may contain its amount of truth! If not centralized (in Brussels or elsewhere) than the power is dispersed and among the European countries, there will be more bargaining than a coherent, at least medium term program. It may be right, desirable to have an agreement for each particular issue, but on the other hand the question is if there is so much time and, also, if the states can afford to wait for an agreement in any detail which will cross their common history. Of course, the hope to coordinate one's domestic bureaucracy seems to be more plausible than the wish to take control over a supranational or multinational one. It is, again, a problem of decision but above all, a problem of 'political geography': how should the center be (re) defined and how far can it be placed in order to preserve the possibility of acting as a center? What is the desirable relation between a rational state and a centre placed out of it?

Here comes the federal solution to say that a center can be in many places, depending on the topic under question and on the will to accept multiplicity of centers. We may even suggest the interpretation that the search for *a centre* is a pre-modern or, in certain aspects, a modern approach, while the acceptance of *a plurality of centers* as a post-modern interpretation of politics. And, in strong connection to this issue, I would say that the answer depends very much

---

[21] Of course, this is not Moravcsik's comment, but mine.
[22] Luigi Einaudi, 1918, cf. Stefan Delureanu, *Geneza Europei comunitare* ('The Emergence of the Communitarian Europe'), 1999, Bucharest: Paideia, page 31;
[23] Cf. Moravcsik, 1993;
[24] Margaret Thatcher, *Britain and Europe*, speech delivered in Bruges on 20th September 1988;

on what we really want to obtain: a preservation of a structure, with its power and traditional relations or, respectively, flexible means of solving the ever complex problems of the desired welfare state. This question leads us back to the choice between structure and function. The intergovernmentalist answer supports the structure, even in the expenses of effects. Following the (neo) functionalist paradigm, there may be the case to sacrifice or to modify the structure in order to obtain better results. If the outcomes prevail over the structure, than the *informal* integration will be more valuable than the *formal*[25] one and the de-structuring of a previous system is possible if determined by the nature of events. But in this case, the bureaucracy may face a huge risk! So, if there is the structure to decide, it will, of course, protect its survival. If the politicians can or dare to overcome the domestic decisions or, even to have their own proposals[26], then, a neo-functionalist perspective is possible and the accomplishment of some goals is closer than ever. But such a perspective multiplies the centers although it seems to centralize the picture. The truth is that "the federated state becomes a stronger unit in the face of external threat" simultaneously with "the prevention of the capture of a system by any one group."[27]

In such a case, there will be room for many perspectives and voices, for free options since the rule can offer to each level of execution, a correlative possibility to make decisions in accordance to the reality, the demands and the possibilities to fulfill them. "Europe will have to find a compromise between the dream of freedom and the need to organize itself."[28] Of course, some sort of bureaucracy always arises[29] and can always be perceived as an obstacle in front of some free decisions. The problem is how much bureaucracy and under whose control; meaning, how much power will such a bureaucracy have and from whom? Are we able/ will we be able to develop those means to control it or distribute its power so as to inhibit the monopoly of the structure? In a national state is quite problematic, since it is usually organized as a unitary one.

---

[25] "William Wallace, (1990) sets up a useful distinction between so-called 'formal' and 'informal' integration. The later denotes the sorts of economic and social interdependencies and interpenetrations that develop without the sanction of deliberate political decision. Formal integration consists of those acts of institution-building which emerge from the cooperative deliberations of national elites.", Ben Rosamond, *Theories of European Integration*, 2000, New York: St Martin's Press, page 130;

[26] A very good example here – although, of course, not the only one, is Jean Monnet's decision to try to convince Churchill (while both France and England were locked in the war) that the best solution for both countries would be the unification under a single govern, a single Parliament and protected by a single army. The overwhelming importance of the bureaucracy made this proposal to fall, despite of the favorable positions of both. (cf. Jean Monnet, *Memoirs*, 1978, New York: Doubleday & Company, Inc, pp. 21-30;

[27] Ben Rosamond, 2000, page 26;

[28] Richard Coudenhove-Kalergi, *Pan Europa*, 1997, page 22;

[29] This idea needs no further support if we just invoke here Robert Michels' *Iron law of oligarchy*;

But in a federation, with spread powers and a system of multiple checks it may be a way out. Actually, the bureaucracy tends to become a dominant actor when there is nobody to compete on that particular slide of supply[30]. If we just keep that in mind, than we can try to design the EU institutions in order to cut this risk. As we shall see later, the system of agencies and the reciprocal checks of the EU institutions make the acquisition of the monopoly, almost impossible. Therefore, the claim that the bureaucracy in Brussels is limiting the national freedom can be considered to preserve a single serious fear: that of the fact that it limits the absolute power of the national structures and brings under a supranational control many of their means to determine unilateral, the overall policy of a country. Moreover, the huge advantage of a federation in contrast to intergovernmental bargains is that the previous provides a framework of security and foreseeable results, projects, and checks. In Moravcsik's opinion, this is a lack of competition and of challenge. But people may wish to go for some safe provisions, especially in certain areas.

1.3. Federalism in Itself

A federal structure is first of all an arrangement of shared and self-rule. It is the nice rule of delegating certain powers in order to strengthen the others and have both set of expectations better fulfilled. Federalism is "both a process and a strategy for political unification, a means by which European states can be brought together."[31] As a process, it marks the road from a picture with different states co-operating more or less if and insofar as they identify some reasons to do so; but it may turn this puzzle to a political unit, protecting and supporting its components. There have been long and strange debates over the character of this unit, if it should be exactly a classical federation or it should go on integrating its parts until the final shape of a unitary state. Moreover, the federations have been considered just half-way political constructions, which should aim to turn into strong, unitary states, as a background of their identity and their claims in

---

[30] A very important analysis in this respect comes from Geoffrey Garrett and George Tsebelis, *An Institutional Critique of Intergovernmentalism*, International organization, vol. 50, No. 2, (Spring, 1996), pp. 269-299. In this study they underline the unbalanced importance that the intergovernmentalists give to the Council of Ministers as if this is the only decision making power at the EU-level. If we just switch the light towards the other institutions, we may easily remark that the influence of the state' negotiators is not that big and can be challenged in many ways until the final decision will be taken in the European Union.

[31] Michael Burgess, *Federalism and European Union, Political Ideas, Influences and Strategies in the European Community, 1972-1987,* 1989, London and New York: Routledge, page 11;

the international arena. The scholars[32] used to call federations as 'unfinished' or 'incomplete' unions, while the 'normal states' were the results of a complete transfer of competences and powers to a central authority. This is/ was, however the position of those still betting for the traditional state, ignoring both the evolution of the global community and the gradually weakening of the states' possibility to influence a decision making process. It may be a harmful decision the transfer of competences and the assuming of a secondary status, after a century long struggle for independence and sovereignty. It may not get the whole support and legitimacy it should get from the population. And, above all, it may be, certainly, frustrating. But, "the necessity to unify Europe is obvious. The existent states are inconsistent powder. None of them is in the position to support the cost of an autonomous defense. Only their unification can make them last. The problem is not between independence and union, but between existing united and disappearing."[33] In the same manner, a Romanian philosopher – Constantin Noica[34] - urged, decades ago, his compatriots to think about their language. He suggested them to imagine that in short run there will be only some idioms selected to be used in Europe. The question was that of the chances – if any – for the Romanian language to be among them. Of course, the underground suggestion was no, but what I consider to be important for this topic is that we can use the same grind to see what European countries will have any – economic, political or military - impact in a short run world, with few great powers sharing or competing for the power in the world. Is there any such European state to claim its readiness to compete and be successful?

As a strategy, the federal proposal is the possible alternative to the above mentioned disappointing picture. The (liberal) intergovernmentalists advocate for 'an ever closer cooperation' which should still leave some free room for the states to decide on exclusive grounds. Starting from the interwar period – with David Mitrany's *International Sanctions* - they considered that any kind of organization beyond a given concrete purpose, replicates on the state' scale the errors and shortcomings of the system of states. Therefore, any other kind of cooperation (even in Europe) is counter-productive and should be firmly rejected. It may be the case that in some respects they have been right, in that particular time. But in this field, things are moving very fast, and the position of any optimum equilibrium can be changed much before

---

[32] Cf. *idem*, pp. 11-21;

[33] Luigi Einaudi, 1954, quoted in Stefan Delureanu, 1999, page 45;

[34] The text was entitled *Answer to a far away friend*, which was Emil Cioran, already in exile in Paris. The letter was written and sent in the '50-s and soon after, it became one major accusation against its author as a betrayal of the workers' system in Romania.

some of the most important analysts to notice. Long run fixed solutions may prove to be very bad solutions if between their theoretical drafting and their concrete implementation, the context had the possibility to change (more or less radical, following crucial events like 9/11). Therefore, yes, flexible solutions are to be found, but not that flexible as to show the states vulnerable again. This is why, "federalism is an obvious institutional response … because it is by definition a form of divided or shared governance, allows flexible solutions to complex situations of overlapping jurisprudence and contested sovereignty".[35]

In its proper meaning, federation had been (traditionally) the definition of different entities brought and kept together (*foedus)* under an overarching idea, principle, and value[36]. The federation was – for centuries – a manner of dual ruling, namely a local, regional one on (more or less) political[37] grounds and an overarching, (more or less) spiritual one. For Europe, it was Christianism to hold together the small or big states, in contrast to non-European powers, threatens or sources of fear. Once with the Enlightenment and the secularization of the political grounds, Christianism should have been replaced by a *rational* idea – which proved to be not specifically European and, on long run, not binding enough. On the contrary, in very short time, the nationalist movement split what was still united in contrast to opposite, reciprocal contesting states. What is now searched as a European identity – and proves to be hard to define – is in fact that particular issue that has been put aside once with the destruction of the sense of European identity, some centuries ago. It was nothing to replace, therefore now, there is nothing to define – out of a deep search.

Still, "a federation is a polity with a strong overarching general government whose constitution is recognized as the supreme law of the land and which is able to relate directly to the individuals who are dual citizens in both the federation and their constituent state. The position and autonomy of the latter are constitutionally protected."[38] The very term expressing a federation means, in fact, a covenant[39], be it constitution or treaty or anything alike. There have been long debates on a comparative ground between US and the European Union, claiming that,

---

[35] Thomas O. Hueglin and Alan Fenna, *Comparative Federalism. A Systematic Inquiry*, 2006, Broadview Press, p. 12
[36] "The first usage of the term was for theological purposes, to define the partnership between man and God", Daniel Elazar, 1991, *Federal Systems of the World: A Handbook of federal, confederal and autonomy arrangements*, Longman Group, page xv;
[37] I have used the term *political* although for long time, *it* meant just personal rule or, for other times and spaces, just territorial application of a given rule. But for the sake of the distinction I need between the federal and the compounded powers, the term *political* can stay here with its large meaning.
[38] Daniel Elazar, (ed.), 1991, page xiv;
[39] Cf. *idem, page xv;*

since the US is a federation trough a constitution than we can call it like that, while for EU is, just a constitution to come and we are not entitled to decide before the legal document will enter into force.[40] Of course, for all those trying to stop this process, any such *detail* represents a consistent argument, while, on the contrary, for those belonging to a more liberal legal school, the very existence of an agreement has to produce its effects. This is why the British politicians reject or support any kind of treatise in this respect, since for them a (gentlemen) agreement is and should be considered an agreement. On the contrary, for the continental politicians, nourished with Roman (*formular*) law, if it is *just* a treaty, than is no constitution, and, as a consequence, it is no federation. Since in this game, some try to cheat by misleading the others, it seems that the first ones are the losers, in the sense that their intention is transparent enough and they are the ones not to fulfill their objectives. After all, what really matters is the way in which the whole system functions or not. Any good outcome can provide support for any label, while a failure will always reject even the best project.

But federations are not functioning all the same. There have been coded <u>cooperative</u> and <u>competitive</u> federations[41]. The first type mirrors the division of powers between a central govern and the constituencies, in order to avoid overlapping jurisdiction and balance the objectives and the means to fulfill them. It is very similar to the decentralization process in unitary states, using procedures as consultations, co-decision or shared cost programs. The component units are considered to be means by which the overall projects can be fulfilled, while the central authority has the responsibilities of coordination and balance. The European Union tends to be such a cooperative unit. From its very beginning, the Treaties explicitly stated the Community competences as coordinative ones. Since the evolution of the Union enlarged very much these supranational powers, the Treaty in Lisbon came to express as clear as possible, the division of powers between the different levels of governance.

The other variant that of a competitive federation is strongly supported by the intergovernmentalists who consider that cooperation leaves very little space for state's initiative, turning the Union market in some sort of monopoly of the Commission and of the EU level decision makers. Besides, the rules/ exigencies of a joint decision leave many of the local interests aside insofar as they might undermine the general agreement, but this turns to be a

---

[40] See Hueglin and Fenna, 2005, pp.13-15;
[41] Scott L. Greer, 2006, *Territory, Democracy and Justice, Regionalism and Federalism in Western Democracies*, Palgrave, pp. 206-213;

strong reason of people' s dissatisfaction. However, if some components pursue mostly their interests on behalf of the overall cohesion, the federation would function more like a confederative structure or even as a regional organization. While supporting these individual aims, the federation may underline some particular interests that got the chance to turn into more or less monopoly positions in themselves, replacing the Union's dominant position with one/ some particular but still dominant status.

In this case, the power arrangement recovers what is called an <u>asymmetrical</u> federation[42], namely one in which one or few units embody and determine the Union's position, access to information, expertise and funds. This is more likely to happen when one or two units are somehow, overwhelming (in size, population or resources), the others. The most preeminent example was the case of Russia in the former Soviet Union. However, since power is uneven distributed in the world, this kind of asymmetry is most likely to be the (written or unwritten) rule in many federations. We face the case of what is called *political asymmetry* that "arises from the impact of cultural, economic, social and political conditions affecting the relative power, influence and relations of different regional units with each other and with the federal government."[43] In the end, the whole problem is of finding an equilibrium point, since the power and the weight of arguments, supports and evidences are dynamic items, changing and – perhaps – following the everyday signals of the subjects they are called to describe.

The other kind of asymmetry, the *constitutional* one, represents the outcome of an unequal assignment of power between different component units. Since there is a matter of constitutional level, the inequality is recognized and carved as such, generating a two level structure according to which, some units are more important than others, namely, they are in the position to impose a certain distribution of funds and a correlative acquisition of chances to pursue particular interests. Since Europe has long time experienced dominant positions of one country or other, its member states are now strongly decided to reject any kind of way back. The strong position that the European Council still retains is, perhaps, the best argument in this respect. As long as any federation has a second legislative chamber to represent the member

---

[42] Cf. Michael Burgess, *Comparative Federalism. Theory and Practice*, 2006, London and New York, Routledge, pp. 209-211;

[43] Ronald Watts, *Comparing Federal Systems*, 1999, Kingston, Ont. : Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press, page 63;

states and re-balance[44] the sphere of influences, this Council will support by its entire means the preservation of its competences and, even, in certain cases, it will try to enlarge them.   This is why the other variant, namely that of a <u>symmetrical</u> federation is searched, as one in which each unit to mirror on its scale, the central authority. It should be more or less an isomorphism between the competences of central and local power, giving each member state the (constitutional) guarantee that its power is – and can't be less than – the power of any other member state, supporting and arguing for the incentives to remain in the federation. This is – and will certainly be – the position of the small states, but also of the former big powers when they face their impossibility to get a legitimate dominant position. For the European Union, even if it is a hard to achieve and maintain variant, it may be the equilibrium position. Perhaps – as history usually acts- it will be not preserved, but at least, it may be a reference point, both for the lawyers and for politicians, in the sense that those who would like to replace it, should look for something providing more stability and trust, than suspicion and centrifugal incentives. "In a unitary, centralized state, the peoples became centrifugal. If they are given a federal constitution, they turn to be centripetal. This truth had been expressed in the XIX th century by Adolf Fischhof. A state can be a federation without being multinational. But a multinational state can only last on federal grounds."[45] In order to determine these grounds, we need to decide on the shape we intend to give to European Union.

1.4. Does EU need to be a federation ?

> *"This region of the world will represent,*
> *as an ultimate result of the work of our epoch,*
> *a federation"[46]*

Was this phrase just the name for an unrealistic dream? Was it as *romantique* as its data birth is used to be called? From a certain point of view it seems so, since in the same period and on identical grounds, people preferred to set national states, sometimes strongly opposed to the

---

[44] „Political asymmetry has often induced efforts at corrective measures. These have included moderating the political influence of larger regional units at the federal level by establishing a federal second legislative chamber with representation weighted to favour smaller regional units and assisting less wealthy regional units by redistributive equalization transfers designed to assist those units.", Ronald Watts, 1999, pp. 65-66;

[45] Urs Altermatt, 1996/ 2000, *Das Fanal von Sarajevo. Ethnonationalismus in Europa*, Zurich: Verlag Neue Zurcher Zeitung/ Iasi: Polirom, page 186;

[46]Giovanni Mazzini,1829, *The Saint Alliance of the Peoples*, quoted in Stefan Delureanu, *The Genesis of the Communitarian Europe*, 1999, Bucharest: Paideia, page 16, our emphasize;

neighboring, surrounding national states. Therefore, is there a federal project (still) possible in Europe? Despite of its long tradition of political and legal projects, it never managed to be more than a short run confederation or, a loose attempt to federalize, vulnerable towards the imperialistic and dictatorial incentives of its leaders. The huge will of power had never left enough room for shared or balanced powers. Basically, we may say that the continuous fear in Europe was about losing power and, on this ground, losing everything. No middle road could have been drawn, no half way solutions could be in line. The depth of these fears sharpened the "arguments" of all the parts and opened huge abysses between the countries. The most preeminent, expressive but tragic outcome of this situation was the Second World War, proving that there was no way out from the anxiety than winning or dying. The entire balance of that period, in human, moral and technical terms acted, finally as a real catharsis and lightened the road to a different solution. Unfortunately, the memories are, still, short, and the new generations of politicians have almost forgotten the lesson. In the fifties the choice between unification or death was plain enough, following the Kantian advice: "there should be built some sort of union, called a union of peace (*foedus pacificum*), different from the peace treaties (*pactum pacis*) due to the fact that the later attempt to end <u>a single</u> war, while that union should end <u>all </u>the wars, forever."[47] Now there is a large plethora of variants arising or being preferred, as if the whole tragedy never took place and the Europeans are still in the position to make any possible selection. They want their power back and they dream of the aura of their position (s) still in a historical way. Is then, somewhere – somehow, any floor for federalism?

On the other hand, observing that more and more national / ethnic groups are on their way to obtain recognition of their identity and, on this ground, to claim their rights, even the one to self-governance, Will Kymlicka states that "the multinational, democratic federations have managed to tame the force of nationalism."[48] In this respect, he considers that "it's pretty natural for the multinational countries to adopt federal systems; we expect that a country made up of a federation of peoples to adopt some sort of political federation."[49] The European Union is – accepting or not – a *federation of peoples*. Their vanities and/ or conflicting histories no not "allow" them yet to admit it, but, still, the Europeans are, within EU borders in the same situation

---

[47] Immanuel Kant, *Perpetual Peace,* (1795), in 'Moral-Political Essays', 1991, Bucharest: Editura Stiintifica, p. 400;
[48] Will Kymlicka, 2001/2005, *Politics in the Vernacular. Nationalism, Multiculturalism and* Citizenship, Oxford University Press/ Chisinau:Arc, page 90;
[49] Will Kymlicka, 2001/2005, page 93;

as the national minorities inside a given state. Perhaps we can not identify the "majority" in neither of these people, but this can't be such a big issue. The majority are "the others", about whose intentions, interests or tools we only start to learn in different terms than those of difference and exclusion.

In such multinational cases, history had already proved that the only way to stay apart from tyranny and reciprocal suspicion is to find out some mechanism of power sharing and collective deliberation. Only through taking part in the decision making process, people can retain the feeling of having – at least, some – control on their lives, on the projects which will affect them and to which they will have to comply. "Any form of governance which is not representative is a lack of form, since the legislator can embody in the same person, the executor of its own will."[50]   But the manner in which such a power sharing has to be designed and protected is still a hard, debatable issue, especially in the EU. We will assume for the beginning that the discussion is only between the member states and the EU level institutions. But still, there are countries of different sizes, both in terms of geography and demography, not to go back to their history and to their (preserved) nostalgias of big powers. In this respect, Kymlicka will reply that the limits of any federative design start with the borders' mapping and, on this ground, the distribution of powers.[51]

In order to provide a possible key to this topic, he delineates two kinds of federations, namely the territorial and the multinational ones. In the first case, the map is designed on ideological/ pure political grounds, cutting across the national/ ethnic units and thus, spreading the population in different political units. As a consequence, no group (not all the groups) may have a majority in its new political "house", therefore, *divide et impera* would be the basic modality of ruling. He considers that this kind of mapping was typical for the process of drawing the American states but this cannot be a pattern for the European federation. However, during the last century, Europeans have also experienced such kinds of federations, but under totalitarian regimes. Therefore, only the multinational federation can be proper for the European Union, insofar as it follows the ethnic/ national units' borders. As long as we take into consideration some of these borders, they have already been redrawn, after the collapse of communism in the Central and Eastern Europe. Others are still in the middle of some frozen conflicts. As long as our

---

[50] Immanuel Kant, 1991, page 397;
[51] Cf. Will Kymlicka, 2001/2005, page 98;

18

discussion remains in the framework of states - EU level options, one can agree that the topic is more or less on its way to be solved. If moving beyond the state level, to the sub-national units, new questions may arise and challenge the already established structure.

But for these "units with national ground" (as Kymlicka did call them) the most important issue is to have a clear assignation of and respect for their exclusive competences. Their incentives to leave the Union or to stay apart from as many decisions as possible can only be overcome by a proper allocation of exclusive areas, as well as by a consistent part of the common token decisions. Put it different, the extend to which the components will support the federation is the one to which they feel they are still in control of those issues that define their identity or immediate interests and/or can see in the federation the proper roof for their long run interests or global economic and security position. This is why the division of powers is not just a topic to slow down the integration or the overall EU development, but, on the contrary. If it is properly realized, it can be the strongest tool of integration and obtaining of an 'ever closer Union".

Each of the European treaties defined what had been considered the optimum power sharing at the time they had been signed. However, the opinion expressed by the high politicians may differ from the agreements they come to sign, not to mention the perception of the population they are called to represent. In such conditions, a split may arise between the legal issue: a treaty that is already part of the national legislation – and the moral issue of legitimacy, leading to the already cliché debate on the democratic deficit in the Union. "Its existence is considered to be morally dependent of the revocable consent of the constituent national units."[52] Since the Treaty in Lisbon already included the exit rules, it seems that the moral dependence may be much more important than it had been so far. For the national groups, the division of power is not (only) a constitutional issue, but above all, a problem of identity, of active participation to everyday governance procedures as main actors, as equal footing parts in a collective deliberation or as holders of exclusive competences in spheres of self-government. In these terms, we may conclude that the belonging to a (more or less) federation is, first of all, a problem of identity: *I* can be part of a group only insofar as *I* continue to exist in it as a decision maker. And the only tool that can provide such an *existence* right is the division of power in full

---

[52] Will Kymlicka, 2001/2005, page 108; He speaks generally about any kind of federation in which the national groups need to feel they are subjects of the decision making process, and not just objects to follow some foreign rules. But following all his argumentation, I considered that this *moral dependence* can be applied to the EU case, especially with respect to its often claimed democratic deficit.

accordance to this status. Therefore, we may say that subsidiarity[53] is not only a clear control on the options to be taken into consideration, but the sign that a certain group is a subject in the process, since the decision can't be lowered to a non-existent group. Or, as long as you have the right to decide, it means that your interests are recognized as legitimate ones and nobody is considered entitled enough to decide on your behalf. This is why I would say – following and supporting Kymlicka's rationale, that the division of powers if a matter of identity recognition.

On the other hand, the idea of multi-level governance in Europe gained more and more supporters, despite the fact that it may still be questioned with respect to its content and manner of implementation. But it represents something different from the centralized rule and, thus, can be a source of oxygen for all those who started to be afraid of a possible bureaucratic dictatorship arising from Bruxelles. This approach is somehow closer to the multinational, multi-interest Union and can ground a further sharing of powers following the internal dynamics of the EU.

Nevertheless this multi-level structure is a too general concept and may be interpreted and misinterpreted according to the very subjective interests of the speaker. Therefore, there have been defined[54] two major approaches on this multi-level governance. The first one considers EU as a "political system with a strong institutional framework, political authority and adjudicatory system". According to the author's description, this is closer to the federalist pattern, having room for a deliberative democracy, which on every single level has competences for a certain list of issues and has no power in respect to other topics under discussion. It follows the (neo) functionalist project, connecting each kind of function to the level(s) that have the expertise and the tools to decide and carry out that particular function. This is the variable geometry, with different designs coming out from the objectives in line. Therefore, the power division follows these functions and conferrers accordingly, to each subject, a specific competence. It is also called the "Europe with regions", inasmuch as it allows the regions or the Committee of Regions to get/ have their (its) own exclusive competences. The problem is that the regions are only accepted as – somehow- second class subjects, namely they have only restricted competence,

---

[53] Or, even the *exact adequacy* that had been suggested as a more appropriate solution. (cf. Guy Heraud, *Federalism*, 1995/1997 Presses d'Europe/ Tg. Mures: Altera, no. 6, pp. 14-15: "In accordance to this principle, each collectivity, of any nature and on any level, should get the juridical and financial powers to allow it to solve its specific problems.")

[54] Cf. Eric Philippart and Monika Sie Dhian Ho, *Flexibility and Models of Governance for the EU*, in Grainne de Burca and Joanne Scott, 'Constitutional Change in the EU. From Uniformity to Flexibility?', Oxford – Portland Oregon: Hart Publishing, 2000, page 311;

given by the first class deciders, who are the states. Therefore, the regions are only accepted, not equally footed with the states. They have (according both to the Treaties in force and to the Lisbon one) only consultative competences, the decisions being made by the states or by the EU level institutions. In this respect, we may say that subsidiarity does not go down, really to the level where the proper information as well as the means of fulfillment is to be found, but it stops at the middle of the road, on the states' level. However, within such a strong framework, one can imagine / advocate for a further set of regulations to prescribe exactly the competences that should lye on the exclusive level of the regions. In this respect, we may consider the legislation in force as incomplete one and can support the Committee of Regions to promote and obtain the above mentioned regulations. After this, we should be in the position to consider the Union as a symmetrical organism (federation, perhaps), where each level of governance mirrors its extend of competences as well as its possibilities to formulate the best response to the uprising issues. This picture should be Nash equilibrium of forces within the EU, overcoming the dissatisfactions, the discourse of what EU lacks or is unable to offer.

On the other side, such a regulative possibility presupposes a previous recognition of the regions as potential main subjects in some respects as well as a previous decision to respect this attribute. Up to now, it seems that the second possible approach to a multi-level governance replies better to such a task. In this second variant, "combining an extreme functionalism with a vision of sub-national actors outflanking the national ones (a 'Europe of the regions')"[55], the rules are not that strict, allowing each situation to look for and formulate its best response. It is more a 'dispersed multi-level governance', in accordance to a liberal inter-governmentalist understanding of Europe. In its essence, this approach is somehow market oriented, leaving the case to shape the rules and the costs. In this respect, where a region has the lowest transactional cost, it should be, indeed, the main actor, while in all the other cases, it should not be allowed to demand more competences than it can perform at a low cost. Taking into consideration that the topic is still, a political one, with nationalist and economic components, the subjective costs can overlap the benefits and, despite of the obvious post position of a given actor, the overall bill will prevail. It is, nevertheless, more promising than the first approach, but with member states still powerful, this switch to regional and local levels may be still a problem for the coming period. Therefore, we may say that multi-level governance may be a path/ meaning the key word to

---

[55] Eric Philippart, 2000, page 311;

division of powers. But the final evaluation of its efficiency is strongly dependent on the meaning we are to offer to this solution, namely to the way in which the competences of each level will be regulated. The label is promising, but can't be enough. Since the nation states are still those to *confer* certain competences to other actors, be they EU level or not, they will also have to decide on the real meaning they would like to give to *the division of powers*, to *subsidiarity* and to the *entitled levels* of any kind of decisions. Nevertheless, while the states remain the ones to decide and the Court of Justice can not add to the rules agreed by the states, a strong feeling of asymmetry will persist in the Union. On one side, the regions (in many times, ethnic differentiated is not cross-ethnic cut by the states) claim for their primacy with respect to immediate and appropriate information in terms of demands and possibilities, on the other, the division operating only until the state level ignores them and nourishes the dissatisfaction and the need to secede. Here is to be found the huge support that the Commission enjoys from the regions, since it strongly supports them – through the structural funds – beside the possibility of the states to intervene and reject this cooperation.

1.5. The European Union now

> *"If Europe is to be saved from infinite misery,*
> *and indeed from final doom,*
> *there must be this act of faith in the European Family*
> *and this act of oblivion against all the crimes and follies of the past."*[56]

It is, already a trendy story to be told everywhere, about two European deficits: the one of defining the Union and the one of deciding how it should work. We face this situation because neither the inter-governmentalists, nor the federalists can consider their project fulfilled or placed on an irreversible path. The present day Union reflects a mixture of the active forces, of the arguments and the powerful projects. No part was able – up to now - to provide enough arguments for its variant. All depends on the pending answer to the European Union's expected identity. This will be the only one to nominate the subjects of power and to offer the ground for them to claim and to obtain the deserved share of power.

---

[56] Winston Churchill, *Speech to the academic youth in Zurich,* 19.09.1946;

"A fortress is a collectivity of people and gods… the gods are, obviously, gods of the fortress. The fortress does not invent them, nor discover. They have been there in the people' soul before the fortress had been set up."[57] In this respect, we may say that Europe' gods are there, in the people' soul. But the Europeans have to learn how to see them again and listen to their lesson. They will find out that there is more what they have in common than what separates them, and therefore, they have to think about a certain system to protect and give value to what they have more precious: their spirituality. However, the specificity of each community will not bring them very soon to this common point. Each of them is looking for a better support and for as much security as possible. In my opinion, the federal path will have to prevail on medium and long run, not because it ensures a stronger hierarchical authority, but because it encompasses the tools to harmonize and protect the component communities from external negative influences and risks. On long run, it is hard to imagine a global world consisting of free acting local communities, irrespective of how exciting this perspective might be.

---

[57] Ortega y Gasset, 2002, page 80;

Chapter 2: Cleavages and Powers in Some Federal Systems

After such a long history that took place on a physically immense territory, there is, practically, unreasonable to consider that two or more communities may be still, so similar that a given macro-political element to be transferable from one system to another one and fit there as a proper answer. While geography had isolated people for centuries and history cut across natural connecting possibilities, societies have developed different approaches, expectations, demands as well as tools to welcome them and to build more or less desired solutions. Therefore, the *sui generis* character conferred to the European Union has also a well-grounded face: the one of an outcome of a different evolution in a different space and with different constraints or advantages. After all, we can't expect Europe to 'copy' any other identity, and thus, one can not consider any ready-made pattern to be the most proper for Europe. Particularities may point to some common features or, on the contrary, to specificities of each society we attempt to study. All what we can expect to obtain out of a thorough research is a list with 'family resemblances'. In the same way in which L Wittgenstein noticed that there can not be a perfect overlapping of the attributes describing two or more members of a certain family, but only some similarities between in each pair one may choose, we may say that there is no identity between various groups of people in the world. As a consequence, each of them produces and modifies in due time, its own organizational culture, in accordance to its very proper features, traditions and interests. Any comparison may – at most – provide suggestions, 'lessons' to be more or less learnt, explanations or warnings, but definitely, not an universal and immutable formula.

This is why, looking more for suggestions and pitfalls – which are to be acknowledged and avoided, as much as possible – looking more for confirmation and denial, perhaps for a proper definition of what the European Union is to affirm, we will have a brief inquiry in some other federal systems. Each of them had been chosen for a certain feature that makes it similar to EU or consanguine to the EU project designing. The order of these systems follows in a way, the kind of diversity defining each of them, diversity which will be more evident in the comparative

discussion closing this chapter. At that point, the 'family resemblances' and the differences between these systems on one hand, as well as those between each of them and the European Union will turn to be arguments for the specific path that the later has to invent for itself. Since every identity is – and should always be – different from all the others (so as to be considered a proper identity), its' making and way of existence will be anyway a specific one, apart from all the others, despite of all the possible contacts, similarities or 'borrowed' elements.

2.1. India

"We, the people of India,
having solemnly resolved to constitute India…"[58]

The most salient characteristic of India is its multidimensional diversity, along various axes and in different degrees. It is "a highly complex and colorful social mosaic."[59] With its five religions mobilizing hundred of millions of believers and fourteen main languages or dialects[60], India offers - from the very beginning - the picture of a hard manageable society. How to hold these people together, how to give them a sense of common identity and why should they follow the line of unity instead of centripetal tendencies? Why is there 'a people of India' instead of 'peoples of India'?

It is, first, the outcome of its almost isolated position as well as of its colonial memory that helped its leaders, especially Mahatma Gandhi and Jawaharlal Nehru in their attempt to unify all those living in the subcontinent and offer them a common identity. The natural borders surrounding India roughly all over have been an important means to keep it safe both from the threatens of its neighbors and from their (possible) influences. On this ground, the presence of the European imperialism especially of the British one, with its long lasting effects had generated a sense of common destiny for the indigenous people in contrast to the new comers. One should not

---

[58] The preamble of the Constitution of India;
[59] S.D. Muni, *Ethnic conflict, federalism and democracy in India*, in Kumar Rupesinghe and Valery A. Tishkov, (eds.), 'Ethnicity and power in the contemporary world', Tokyo: United Nations University Press, 1996, p. 179;
[60] Cf. Kesselman, Mark, Joel Krieger, William A. Joseph, *Introduction to Comparative Politics*, Boston and New York, : Houghton Mifflin Company, 2004, p. 251. According to Ronald Watts, there are "18 recognized regional languages", besides Hindi, the official one – see Ronald L. Watts, *Comparing Federal Systems*, Kingston, Ont: Published for the School of Policy Studies, Queen's University by McGill – Queen's University Press, 1999, 2nd ed., p. 27;

ignore, of course, those Indians who, being in an elite position could have somehow benefited from the British institutions and rules, but the large majority of population was on the other side. As a consequence, we may notice the emergence of a common definition of those who have been considered by the occupiers to be only working hands or even less. Across the cultural cleavages of any kind, the sense of belonging to a suffering community was very strong and provided the energy and the commitment to stay together against the *other* and, later on, to fight for the independence, for the self-rule within the native space.

"It is the Union of India that is the basis of our nationality"[61]. In terms of the official language, there is only one constitutionally designated as such: Hindi, in Devanagari script, (art. 343), with English being used for a transitional period, as an alternative. Only the member states may adopt other language(s) as official ones or as means to communicate with other territorial units (art. 346). But, at the national level, there is only one language that gained the statute of the official idiom. The country is – by Constitution – a secular one (according to the Preamble), guaranteeing the freedom of religion (art.25). In the same view, the main act provides an Indian citizenship, and no other (possible) local, regional or specific one. This/ these kind of solution(s) may look a little bit strange for a federal portrait, but it (they) underline(s) the path on which such a large and complex society exited from its subordination statute to present day independence. We may even add that the uniqueness of citizenship is more the sign of a unitary state, and, as a result, the component units are not quite full states, fact that may really question the attribute of federation which is constitutionally claimed by India[62]. This possible suspicion is more than reasonable, since even the authors of the Constitution have had a peculiar way to interpret the label of federation: "Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single *imperium* derived from a single source…"[63] As a consequence, a federal design was preferred for administrative reasons, but in fact, the aim was only to organize and manage a

---

[61] States Reorganization Commission's Report, as cited in S. D. Muni, 1996, p. 188;

[62] Despite of the constitutional provisions, many scholars have noticed the differences between the federal "pattern" and the Indian administrative system, as well as between the written constitution and the effective procedure, characterizing the everyday hierarchy and practices. For instance K.C. Wheare (1964, p. 28) considers that India should rather be called a 'quasifederation', due to the role of the president to appoint or change the governors of the union territories, basically in order to consolidate the power of its own party. (according to Arend Lijphart, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, 1999, New Haven and London: Yale University Press, p. 190;

[63] Dr. Ambedkar, chairman of the Constitution Drafting Committee, in India, *Constituent Assembly Debates*, vol. 7, p. 43, quoted in S.D. Muni, 1996, p. 187;

huge territory populated by an enormous population. After obtaining the independence, India's leaders were mostly interested in consolidating the new state, in setting up its institutions, in formulating the identity and specific policy in the new context. This was why Mahatma Gandhi opposed the separation of country into India and Pakistan, and, later on, Nehru was so much reluctant in organizing federal units on linguistic grounds!

According to the Indian Constitution (1950), there is a very complex and interesting hierarchy of regional and local authorities. Namely, the country is divided into 28 *Union territories*, some of them still preserving the original design, others being constituted later on, along the linguistic borders. Each of these units "*shall be administered by the President acting, to such extent as he thinks fit, through an administrator to be appointed by him with such designation as he may specify*" (art. 239) In the same time, at this level there is a legislative body, that may be elected or appointed in whole or in part, in charge with regulations provided in the "exclusive list". This list consists in some sort of exclusive powers of the states – but only insofar as they do not contradict the national policies. The fields in which the states have 'exclusive' legislative competence are: "*public order; police; education; local government; roads and transport; agriculture; land and land revenue; forests; fisheries; industry and trade (limited); state Public Service Commission; and Courts.*"[64] This list suggests the possibility of a real self-governance and due to the devolution of powers with respect to industry and trade, it created the room for some states to acknowledge a high rate of development (like Andhra Pradesh), while others (with large rural areas, or with a weak transportation/ communication system) remained much behind. (see the Northeast region). There is also a "concurrent list" of subjects on which the state's legislatures may regulate in accordance to the laws of the centre. "*These subjects include: criminal laws and their administration; economic and social planning; commercial and industrial monopolies; shipping and navigation on the inland waterways; drugs; ports (limited); courts and civil procedures.*"[65] It is not hard to notice that the shared list consists of policies that (may) contain an extra-state element and, therefore, require a coordination with neighboring units or, even, with the national level (in terms of navigation, criminal issues, economic planning). Here is the place for the governor appointed by the president to manage these policies, usually by acting independently from the local executive. Therefore, we may note that - at the states' level -

---

[64] S.D. Muni, 1996, p. 188;
[65] Ibidem; The list is interesting not only in itself, but mainly with regard to a possible comparison to the similar one contained in the Treaty of Lisbon (EU, 2007);

there are two *concurrent* executives: the governor – reminding of the British administration and representing the centre - and a Council of ministers, appointed in accordance to local regulations and to the parties' weight in that region. From time to time and for various reasons, "the governor has the authority to dismiss the chief minister and his government and to subordinate the state to the direct administration of the federal government (president's rule) – albeit with the provision that he or she calls for new elections to the state assembly"[66]. Here is another issue that may contradict a federal project, but, as we will see, the president's power is gradually decreasing while the member states – aware of their importance, hence weight – appropriate more and more tools for their self-rule. Therefore, this provision, despite it is still in the Constitution, has no fuel to produce effects, any longer.

Inside the Union territories, there is also a multilevel structure of executive authorities, with distinct names and rules according to the communities living in each of them. In this respect, there are the metropolitan areas (art. 243P), "*comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas, specified by the Governor by public notification to be a Metropolitan area*". The *districts* (art. 243Pb) themselves are considered parts of the states, containing *Municipalities* and *Panchayats*, each of them with its own executive and administrative regulations. Both are constituted (art. 243P) according to a public notification of the governor as self-ruling entities. While the *Municipalities* consist mainly of urban areas, the *Panchayats* represent administrative units of the rural areas, consisting of two or more villages. The *Municipalities* will designate a *Council* (for smaller urban areas) or a *Corporation* (for larger urban areas) as their executives. At the level of villages, there is a *gram sabha* "*a body consisting of persons registered in the electoral rolls*" (art. 243) who exercises the powers provided for it, by the Legislative of that State. There are also some authorities designated at an '*intermediate level',* between the village and the district level. They are specified by the governor and represent executives for that particular region. However, in some states, the Constitution recognizes (art. 244) 'scheduled areas and tribal areas', enjoying a specific regime and having particular competences and rights.

With such a ramified structure, we may conclude that India has a really decentralized administrative system, pointing to some sort of subsidiarity in the exercise of powers. Its

---

[66] Brass, Paul R., *The Politics of India since Independence*, Cambridge: Cambridge University Press, 1995, cited in Anton Pelinka, *Democracy Indian Style*, New Brunswick and London: Transaction Publishers, 2003, p. 121;

structure suggests that each kind of human setting has its own decision making authority, connected trough various links, to the supra-ordered ones or, to those of the constituent units. The whole "tree' seems to mirror some images of the world as one may pick up from the religious (and non-religious) cosmologies. It looks like the traditional imagery had been transmuted in the modern world to organize and support the whole system. But the reality, the everyday exercise of powers denies the pattern and provides its own variant[67]. "According to the written constitution, the president has a large role, whereas according to the "real" constitution, he has only symbolic power. In general, the president can only act on the suggestions of the prime minister and the cabinet."[68] But in this case, there is some sort of Westminster pattern with a real power of the executive prevailing over all the others. This remark should not surprise anyone! With a British legacy in terms of political culture and administration as well as with a short history of political parties constituted with regard to the struggle for independence, the majoritarian system and a cabinet strongly supported by the winning party are more than obvious. Not to mention the overwhelming role of the prime-ministers in India's post-colonial history! Such strong personalities backed by their ability to hold together the immensity of population (see interests and incentives) in order to build a modern state can not (and could not) be overcame by any Constitutional provision, political decision or dream. They have been the core of the entire process and, definitely, the way in which India's political systems functions now is by far, the outcome of this situation.

Therefore, "in accordance with the tradition of Westminster democracy, we can distinguish between efficient parts and dignified parts of the political system in India, too. The lower house (Lok Sabha) and the prime minister with his cabinet are "efficient", that is, of real importance, whereas the president and the upper house (Rajya Sabha) are "dignified", that is, only of symbolic importance."[69] While the Upper House is supposed to represent the member states and they do not have a hand in influencing the national decision, the picture looks more like in a homogenous country – which is not the case. During the last two decades, even the enormous Indian society moved on and regional forces, especially parties are now challenging

---

[67] Is the Constitution still a *should-be* narrative, while the real life, with its shortcomings and legacies proves to be unprepared to meet? Are the Indians living in a two-level reality: the every day one and the constitutional provisions (perhaps some of them pretending that this latest one is the real one, due to an archaic but specific design)? Due to the limits of this paper, we will keep these questions only at this rhetorical level, as possible suggestions or just remarks.
[68] Anton Pelinka, 2003, p. 117-118;
[69] Ibidem, page 116;

both the national decision making and the local policies. They behave like veto players every time when the two large parties (INC and BJP) seem to ignore their demands. The Westminster pattern can not support a plural society – except, as it seems, for the special times, like nation building or radical political crises. In all the other cases, the diverse perspectives ask for representation and for a voice in the policy-making. The multidimensional Indian society can not fit the rigid paths of a two purely political options and, thus, pushes the whole process to create its own flexible framework. With such a demanding target, the executive is to be (and to remain) a strong power, in order to accommodate (possible) centrifugal tendencies and bring them inside a common narrative. It is not at random that the national executives moved from a personalized style induced to ministers selected on both merits and personal loyalty to the prime minister, to a technocratic style, grounded on competence and institutionalized tools. The decreased stability and predictability of the political system is to be balanced by a strong commitment to the federal system and to the need to define appropriate answers to complex challenges. The more India goes beyond the independence issue, it has to develop the national capabilities to face its multiple cleavages as the groups are there to ask for their rights. Since the 'common enemy' is no more there, differences more than common things shape the political agenda.

"India's socio-cultural mosaic is the true picture of "unity in diversity", like a bouquet of flowers or vegetables in a salad bowl, where every component, while retaining its specific identity, is a part of a larger whole."[70] In this respect, they will keep an eye on every national decision and will take any chance to ask for more and more instruments to protect and affirm their identity. Member states' powers will have to be(come) real powers and, perhaps, at some point, the governor's role will visibly decrease. An important tool should the fiscal policy, which will have to assure the states their necessary degree of economic freedom to make decisions and implement them according to the reality they best know. For this reason, the federal level will have to agree to devolution of real powers, backed by the proper taxation policy instead of the present day centralized way of funding. The unifying tendencies or traditions that I have already mentioned should leave the room for an economic pluralism and for an increasing sense of self-rule. As any mosaic (or myriapod being), the federation has to protect each and every part in so far as to preserve its own complexity. Therefore a proper balance of powers will have to be more

CEU eTD Collection

---

[70] Rashiduddin Khan, *Federal India: A Design for Change*, New Delhi: Vikas, 1992, in S.D. Muni, 1996, p. 179, our underlining;

and more articulated, both between the Parliament and the executive on one hand, and on vertical dimension, on the other hand. With a Parliament's voice becoming or remaining effective and providing a sense of equilibrium between multiple paradigms to be represented and listened, and with an executive prepared to deal with the complex context it faces every day, India can overcome the multiple challenges of holding together such a 'salad bowl'. Only a neutral but real federal executive will be in the position to moderate the biased and strongly supported states' governs with respect to divergent policies. A more and more consociational system will (have to) strengthen the 'unity in diversity', together with a clear delimitation of each level's powers. They will have to support the federal structure and will enable the system to be the proper answer for each of the multiple groups defining the 'bouquet of flowers."

At a quick look, has Europe something to learn from this picture? Of course, yes, and it is, by far, the patience to move from an inherited system to an appropriate one in order to accommodate its overwhelming diversity. India is not a closed system and it can not be a perfect model. But as any living society, it offers an institutional system in making, with achievements and demands. Some of them are already a matter of history in Europe, others may be proper suggestions for its political unity under construction.

2.2. Switzerland

"In the name of God Almighty!
We, the Swiss People and the Cantons"[71]

Although it is a small country hidden between – or protected by – the mountains, Switzerland embodies *in nuce* all the history, the hopes and the disregarded paths of the European continent. The Swiss story[72] is about religious wars but also about tolerance, compromise and secularization; it contains clashes of different linguistic groups with the entire set of collective memories, stereotypes and vanities defining such conflicts, but also the wisdom to find a room for each of them and pacify opposing camps; perhaps, above all, Switzerland is the richest source

---

[71] The Preamble of Switzerland Constitution;

[72] Switzerland consists of twenty cantons and six half-cantons, has three official languages: German, French and Italian and four national languages - the three already mentioned and Romansh – spoken by a population of no more than seven million people. Their main religions are Catholicism and Protestantism, although now, due to the migration process and asylum seekers, many other religions characterize growing groups of people.

of evidence for any academic comparison of the unifying policies and self-rule commitment. Inside of its narrow physical landscape, *the Swiss people* discovered the ways-out of each type of labyrinth which the domestic or European events had thrown in its way, during the time. It has learnt from every single trouble and now, it works to keep alive all the lessons trough which these peoples become and remained *a people*. If it have decided to become a unitary state, the pressures from outside would have been only the pretext for each of the component unit to run away and deny the possibility of Swiss (con) federation[73]. If strong positions would have defined the politics of the *Orte* (cantons), no Swiss people would have ever existed, but peoples or just parts of the neighboring nations. While the very idea of a nation-state is as irrational as it were the European attempts to unify the continent under a single – national rule: imposing a political culture over different groups with specific values, means a denial of their deep identity and thus, a complete but deliberate ignorance of their existence.

Instead of experiencing such means of hurting each other, the Swiss peoples 'invented' solutions and tried to remain faithful to them, so as to make their life easier. Hence, the lack of trust in the *other*, the different perspective or set of values proved to be secondary in relation to external threatens, coming from the big neighbors around. When they had to balance between a compromise which would have preserved their autonomy and freedom, on one hand, and, a sharp demand bringing two parts to collude on their territory: the other cantons and the big nations, on the other hand, the Swiss people agreed to step down and tolerate the small communities seeking similar recognition and protection. Consociationism became a tool for peace making and politics in order to protect from bigger and un-manageable conflicts. Defined and re-defined by continuous challenges of the surrounding political environment, this instrument came to be the ground of what the controversial leader, Christophe Blocher brought back into everyone's attention: *the idea of Switzerland*. This idea consists of a sense of neutrality generated by the "fears from being ruled by foreign judges"[74], from losing independence, direct democracy and freedom to disregard macro-politics inside a self-defined island of domestic issues. It was this need of neutrality and independence that brought divergent parts to compromise and saved

---

[73] "The Federation is still called Swiss Confederation for several reasons and in particular, because the German name ('Schweizerische Eidgenossenschaft') can not be translated into French and Italian.", Thomas Fleiner, *Federalism: Basic Structure and Value of Switzerland. Recent Developments In Swiss Federalism*, http://www.thomasfleiner.ch/index.php?page=281&lang=0, accessed April, 20th, 2008, p. 2;

[74] Jurg Steiner, *Consociational Theory and Switzerland _ Revisited,* in Jurg Steiner and Thomas Ertman, (eds.), 'Consociationalism and Corporatism in Western Europe. Still the Politics of Accommodation?', Amsterdam: Uitgeverij Boom, 2000, p.114;

Switzerland from being divided and/ or incorporated in the neighboring states. It was the "legitimacy of the unity of the nation"[75] that gave sense to the decision of remaining together and trying to accommodate with each other. Despite of the linguistic or even religious diversity, the trust in values of self-rule and direct democracy worked as linking device and provided reasons to overcome all the major misunderstandings or tensions.

As a result, a party like the Free Democrats, having all the seats in the Council of States (the upper chamber), gave up fighting and made possible for the Catholics Conservatives to gradually obtain seats in that decision making institution. The immediate result was the drastically decrease of the number and efficiency of referenda against the main regulations and, on this basis, a prevention of this kind of conflicts. The same happened with the seats in the executive (The Federal Council), allowing the political scene to get its equilibrium inside the main institutions and provide it with means to solve the problems through cooperation and bargain. On one side, this arrangement facilitated a better representation of the various groups in the legislative and the executive, on the other hand, the outcome of the federal politics was the result of negotiation and agreement of the major political forces in the country.

Besides, the vertical dimension was /and had to be very much token into consideration, so as to leave enough competences to the cantons on the principle of self-rule. This principle together with the residual sovereignty constitutes the grounds of Cantons' loyalty to the federation. The 'idea of Switzerland' in its moderate but legal version can be formulated in terms of 'remaining together in so far as self-rule and participation to federal decision are guaranteed'. "The very legitimacy of this unit (*the Swiss federation*, n.b.) is based on the constitutional autonomy of the Cantons (self-rule) and their constitution making power on the federal level (shared-rule). The Swiss Confederation exists through and by the will of the Cantons."[76] It is a bottom-up construction, aimed to serve the member units and to protect their independence. In this respect, the competences of the (con) federation are limited to those agreed by the Cantons and also, limited by the exclusive competences of the component units. It is more an attributed power, concerning those fields in which the Cantons have no appropriate means or, which require supra-Cantons decision. According to the Constitution, these exclusive federal powers are: protection of the constitutional order of the Cantons (art. 52), foreign relations (art. 54), research

---

[75] Thomas Fleiner, *Federalism: Basic Structure and Value of Switzerland*, p. 4;
[76] Ibidem, p. 2;

(art. 64), resources protection (art. 76), environmental issues (art. 77), transportation (Section 5), nuclear energy (art. 90), competition policy (art. 96) monetary policy (art. 99) and agriculture (art. 104). An important remark is to be added here, with respect to foreign relations. The weak sovereignty that the Cantons still preserve allows them to have direct agreements with regions or sub-national units from other states – with the only duty of informing the Confederation about them. Since the inter-regional cooperation in Europe is now on an ascending path, the Cantons may enjoy a large spectrum of opportunities to plan and manage their own 'foreign policy' in fields of direct concern. Taking into consideration the reluctance of a large part of German speaking population of Switzerland with respect to EU integration, the chance for the Cantons to develop their direct relations with regions from the EU member states proves to be more than attractive. After all, issues of exclusive federal power do not interact with the possibilities of regional cooperation in Europe and thus, the Cantons will feel free even to ignore – at some extend – the topic of joining the neighboring structure.

The Cantons also enjoy some shared competences with the confederation, in terms of co-operation both in the decision making process and in the implementation of those decisions. The fields in which such a two level work is provided are: the security (art. 57), sustainable development (art. 73) and economy (art. 94). In the same time, the residual sovereignty of the Cantons list as exclusive competences the right to adopt their own Constitution, provided that it does not contradict the federal law (art. 51), the organization and management of the school system (art. 62), of culture (art. 69), of the relationship between church and state (art. 72) and, above all, tax collection (art. 128). The later is the most important device of preserving a certain identity- related status quo and, on its ground, a sense of grateful and loyalty to the con-federation. As long as the most important part of these taxes remain and are used by the Canton's authorities, they may develop specific policies that constitute in grounds of public welfare and support. The reverse side is that having (direct) control on these money, citizens' participation to the decision making process is more than a constitutional provision, bringing and keeping the public choice at the origin of almost all the adopted regulations.

In order to support such a decentralization, the Swiss Constitution provides three levels of citizenship, that are complementary and allow every person to mark its affiliation not only to an administrative body, but above all, to a political and societal culture, to a way of living, that is, to a set of values. As a consequence, "a Swiss citizen is the one who has the citizenship of a

Municipality and the citizenship of the Canton." (art. 37, 1). It means that the lowest level of policy making is the Municipality. Here is the place to mention that they enjoy a large autonomy both in constitutional and fiscal terms. Their everyday competences are guaranteed by the federal Constitution (art 50) and detailed by the cantonal law. But as a common feature there is the right to decide the tariffs to be paid by the citizens and, on this financial ground, Municipalities administrate schools, culture, health system, social affairs, traffic and police. In accordance to the geographical position, they will deal with issues of tourism or environment protection or housing and employment. In all the cases in which the subjects under discussion may affect the municipalities, they are invited to deliver a position or, even, to vote. The qualified majority vote of a municipality may lead to an approval or denial of a piece of regulation. Therefore, we may conclude that municipalities own some sort of sovereignty in terms of making their own rules, co-operating or having even veto power in Cantonal or federal legislation but also having executive competences to implement and manage the policy making. Following from these and from the fact of being a source of citizenship, the Municipalities can regulate with respect to religion or decide in term of official language. In this later case, the federal Constitution only decides for German, French and Italian to be official languages, Romansh obtaining this statute in relation to the population speaking this language. It is up to the local decision making power to opt for one culture or other, for affiliation to a Canton[77] or other and for all the consequences coming out of these decisions. Moreover, since there is no federal public administration, the local authorities are not decentralized federal institutions, but real and full-powers authorities in the field.

Above the Municipalities, there are the Cantons, with their own citizenship and exclusive powers on the ruled territory. According to the Constitution, their territories are 'sacred', namely the borders are unquestionable or such a change can only be initiated by the Cantons under discussion. With a clear list of exclusive powers and with the economic and legal freedom to use them, the Cantons are still some sort of states, despite their limited, residual sovereignty. On one hand, their everyday rule is based on compromise and partnership both with the Municipalities and with the federal level. Analysts usually underline the search of harmony and peace on behalf of which individual rights or demands may be / and are sacrificed or shaded. On the other hand,

---

[77] Of course, such a decision is not to be taken every day and can not lead immediately to a change of map. The road from a municipal decision to its enforcement requires many other votes and approvals, but it always constitutes a first and unavoidable step.

the Cantons have a very strong way to influence the federal policy, trough the second Chamber of the federal Parliament, the Council of States. The rules on which this Council makes decisions is often criticized as not being complete democratic[78], since they violate the principle of 'one man, one vote'. As a result, small Cantons, with few population have equal power in the Council as the large Cantons with much more inhabitants, the votes of a single person having different weight according to the Canton he is citizen of. But on this ground, the rights of minorities are protected and their voice in the federal policy is provided similar room as to the major groups. This is why Switzerland is called a symmetrical federation, since no Canton has a privileged position or means to determine the federal decision.

The vertical separation of power follows the principle of territoriality, meaning that each Canton has the preemptive power to shape everything that will take place in its area. As I have already mentioned, each Canton has its own Constitution and court system. The federal jurisdiction relates only to appeals on a restricted number of subjects, all the rest being the exclusive competence of the Cantons. On their turn, "the Cantons do execute and implement federal laws with cantonal courts and cantonal agencies."[79] They can also oppose any federal rule if they consider it to be inappropriate, by activating the 'cantonal clause'. It represents a cantonal variant of referendum, in which the Cantons are expected to pronounce with regard to a certain debatable issue. But this means had seldom been used, while the real referendum with people responding had been preferred. Another important mechanism that Cantons have in order to affirm and preserve their identity is the exclusive power to decide with respect to linguistic diversity. In this respect, "the Cantons designate their official languages. In order to preserve harmony between linguistic communities, they respect the traditional territorial distribution of languages and consider the local linguistic minorities." (art. 70, 2)

All these competences point towards the following conclusion: each of the three levels – municipal, cantonal and federal - has its own regulation means, each with a large autonomy, limited only by the federal Constitution in terms of separation of powers. The executive branch consists of the Federal Council and of enforcing agencies only at the cantonal and municipal levels. The federal cabinet deals only with few powers and has no subordinate agencies.

---

[78] See Amoretti, Bermeo, 2004: pp.27-55; Fleiner, *Federalism*; Jurg Steiner, 2000;
[79] Thomas Fleiner, *Switzerland: Constitution of the Federal State and the Cantons*, in Norman Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003, p. 370;

Therefore, its rules are, first interpreted at the Cantonal level and than, enforced according to Cantonal procedures. This is the pattern of what Thomas Fleiner calls an 'executive federalism"[80], in which there is no competition between federal agencies and Cantonal ones, but hierarchy[81] and cooperation.

However, the federal executive is quite unusual. It consists only of seven persons, elected by a joint session of the two Chambers of the Parliament with the possibility to be re-elected according to seniority and merits. They have to represent – and balance – all the major cleavages in the society: political (being selected on a quite rigid allocation of seats between the political parties); linguistic and regional. With no prime minister but a yearly rotating chair, they are much more administrators than managers. Their degree of freedom is relatively low in terms of initiative and change, while their real exclusive powers are also limited. Most of their duties are to be realized in cooperation with the Cantons or even with the Municipalities. Therefore, we may say they have much more a balancing task, of correlating and preserving the equilibrium between different demands and ways of being fulfilled. Their major skills should be the ability to make concessions and to bargain in order to formulate the optimum answer for all the actors involved.

This consociational path has proved to be the key to stability and trust, to accommodate differences and maintain a social and political peace. However, while some authors praise it[82], others start underlining its bounded possibilities to maintain a long run working system. Their

---

[80] Cf. Thomas Fleiner, *Federalism. Basic Structure and Value of Switzerland*, p. 17;

[81] I would say that the idea of hierarchy is debatable here, since the Cantonal agencies do not implement automatically the federal regulations. In a hierarchical structure, the lower levels execute the rules provided by the higher ones. The author compares the case of Switzerland with the American one, which he calls to be a market system, based on competition between federal agencies and member states ones. The absence of such a competition in the Swiss case does not seem enough to ground the idea of hierarchy, but Thomas Fleiner considers that: 'Executive federalism is based on a hierarchical relationship between Cantons and federal government in all matters of federal competences." (Ibidem); I'd rather consider such a hierarchy in terms of EU enforcement of some policies – like the Common Agriculture Policy, where the lower levels have no room for interpretation.

[82] "Why then should experiences which have been made in Switzerland with all what is described as substantial identity of the Swiss Confederation, namely the Size without extension, a people without nation, a democracy without parties, a government without opposition, a alliance without bond, a country without power, common sense without altruism not be exported into any other country of the world and there be made as standard for good governance and orderly statehood?" Hans Peter Schneder, in Thomas Fleiner, *Mensch und Staat*, Festschrift, Freiburg, 2003, cited by Thomas Fleiner and Lidija Basta Fleiner in *Constitutional Democracy in a Multicultural and Globalised World*, editorial printout, 2006, at http://www.thomasfleiner.ch/index.php?page=281&lang=0, accessed April, 20th, 2008, pp. 650-651.
The question raised by Professor Schneder is nice and full of optimism, reminding of Voltaire's admiration for the English political system of pluralism without revolution. The question is if present day Switzerland can afford to maintain this peaceful, romantic cooperative scheme or will have to move on, in order to supply proper answers to contemporary challenges.

arguments are originated in the little room for innovation and articulation of dissent[83] that will somehow push to routine and repetition. This claim reminds of Pareto's elite circulation as well as of market's requirements for change and adaptation. Steiner's suggestion is to combine consociationalism with a majority rule, that should challenge the distribution of seats, thus of weights in the Parliament and the Federal Council. Although I would agree that consociational path may become outdated some day, for such a diverse society as the Swiss one, a majoritarian rule would be the fire on a source of oil. Agreement is not yet institutionalized (and, perhaps, will have no means to do it), but is obtained every day in terms of compromise and bargaining. Majoritarian rule can only function in a homogenized society but not as means to homogenize. Even India – with a British political tradition - is shifting to proportionality in order to address the diversity and the pending problems. For Switzerland, the very idea of the (con) federation was to preserve diversity and offer each group a real chance to participate and/ or to decide. Any failure in this respect will only feed the nationalistic movements and will have a breaking potential for the whole system. Since the Swiss *raison d'etre* is exactly this fragmentation and flexibility, any kind of majority rule will induce rigidity and some extra-centralization that can not be accepted in the present day picture. Of course, a stronger executive might emerge in that case, but I consider that the Swiss people would rather support strong cabinets at the lower levels, dealing with each regions' right to develop its own understanding of politics. Instead of trying a more centralized variant, Switzerland may provide a real decentralizing lesson, strengthening the regional policies in Europe and the claims of the local authorities, which are, anyway, more similar to the Swiss Cantons, than to the (national) states.

2.3. The United States of America

"We, the people of the United States"[84]

Despite of its enormous diversity and size, the United States claim to be the unity of a single people. No reference is made to any kind of differences between the people living there. Cleavages are not a political issue, they did not / and do not count in the political design of the federation. Even the territories are not delimitated on linguistic or racial or religious grounds! As

---

[83] See Jurg Steiner, 2000, p. 104;
[84] The Constitution of the United States of America;

a consequence, there will be no major ethnic party at the federal level, nor rules to allow every / or, at least, particular group to get a special access to power or to the decision making process. The whole extension of the US was a territorial one seeking power and space, in the name of some common agreed values expected to hold the dream alive. We may say that the trust in freedom and democratic devices bind these people together and legitimate all the politics carried on their behalf. Therefore, the United States can be called a territorial, ethno-neutral federation, proposing from the very beginning a certain unifying paradigm to include but also to overcome all the local differences and incentives. Until very late, the government did not want to agree that there are minority groups in the United States and still, identity issues are not in the situation to shape the agenda of the federal policy.

Constituted from below, as a consequence of the decision made by the colonies, US can be metaphorically considered a top-down federation, since there are the principles, the fear and the idea of America to keep people together and support many centralizing reforms.[85] The US Constitution - the oldest federal one still in force – mirrors the context and the opinions that lead to its ratification two centuries ago, namely the case of separate states agreeing on a common basic law. This is why the member states got such large competences and powers provided by the fundamental law! However, this power seems not to define them any longer. The history and evolution both of the United States and of the international demands transferred gradually many powers from the member states to the federal level. As a consequence, we may remark that "the central government has become much more powerful than the states, but the respective strengths of the two have been subject to ebbs and flows."[86] On one hand, at the beginning there was no desire to go for a consociational system between weak states, in terms of military, security or politics. With a (declared) homogenous society, there is quite no reason to do so. Either the states decide to unite in a federation or further, or they stay apart. In this case, there was the federal pattern to prevail, but the states have been precautious and transferred limited and only concrete powers to the federation. They needed only to be sure that a supra-ordered authority will provide them the safety they were really lacking. We may say they needed to stay together to protect each

---

[85] We may notice this, in contrast to Switzerland, where the 'idea of Switzerland' is not enough to undermine the linguistic cleavages and to push the confederation towards a centralization path. In addition, the first 'variant' of the US was a really bottom-up federation, while its enlargement through the incorporation of the new territories may be also considered as an argument for a somehow top-down federation. It is, anyway, a complex case, due to the manner of coming into being. Here, may be seen, a common feature with the European Union.
[86] Norman, Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003, p. 356;

other and together against common risks. Economic or social issues were not a priority at that time and they had to invent and / or adapt a proper path for them to enter and be legitimized by the American political system. So, the state as a political unit emerged bottom-up, but the political language in terms of public policies, strategies and values was 'elaborated' from the centre and transferred to the states.

Besides, the development of the federation and the overall history leaded to a more centralized power, supposed to manage better the situation and protect the states both from domestic disputes and from external threatens. "Two developments have been primarily responsible for the ascending predominance of the federal government: first, the nationalization of commerce … and second, the gradual nationalization of fundamental civil and political rights"[87] With respect to commerce, we need to mention that the emergence of a single market among the former colonies pushed the creation and consolidation of different agencies to deal with the questions of their harmonization and also to reply to the society's demands in due time. These agencies themselves tried to maintain their initial freedom and to behave like market oriented actors. However, the government strove from time to time to standardize their activity and codify some of the rules to be followed in their everyday office, in order to achieve uniformity for the entire American administration. Documents[88] like *Administrative Procedure Act* (1946), the *Small Business Regulatory Enforcement Fairness Act* (1980) or the *Unfunded Mandates Reform Act* (1995) represent as many attempts to set up a common set of rules and control instruments. Each time, the agencies replied with an ever stronger commitment to defend their autonomy and remain independent from any overarching strategy-makers. However, the military programs and the social chapters from the presidents' agenda in the last two-three decades have pushed these agencies to adopt a more integrated attitude, in terms of opening towards a more cooperative approach and to a cost-benefit structure of their programs. On one hand, upon the pressure coming from the civil society, they were obliged to offer permanent information with regard to the rules to be adopted, the programs to be implemented or the public costs that will be implied. On the other, since the Congress seized to allocate money without a clear exposition of reasons and evidences, these bureaucracies have learnt how to lobby for their

---

[87] Michel Rosenfeld, *Pragmatic Federalism*, in 'The Failures of Federalism in The United States', excerpt included in Norman, Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003 p. 360;

[88] See Gary Edles, *Developing a European Administrative Law Tradition: The Model of the US Administrative Procedure Act*, in 'European Public Law, Vol. 6, Issue 4, December 2000, pp. 543-573;

interests, how to place themselves inside or near the political scene, how much freedom they could afford as well as how to gain more possibilities out of a narrow framework. As regulatory agencies, they need the support of the funds' governors, but, on the same time, these actors need the loyalty of bureaucrats to promote their projects and implement them properly, as long as these politicians seek to have a good public image and re-election chances or, accordingly, for a long term office. Therefore, the agencies, as de-centralized means of the American executive branch have to play a very complex game between the numerous institutions or groups involved in the act of governance and managed to develop strategies in accordance to every main objective that they have to fulfill. In some cases, there is the local, intra-state agreement they have to make, but in most of them, the 'deal' is to involve other central institutions, connecting them and even 'locking' such authorities in a single narrative. This is why in many cases, the federal agencies clash with the states' ones: they have to cooperate with different kind of actors, pursuing different interests and shaping the implementation story according to their own means. Therefore, the American system was called a competitive federation, in which the policy making process has various levels with different kinds of possibilities and projects. Despite the fact that in the 80's, the presidency managed to reduce very much from this bureaucracy in order to get money for other fields, considered to be of strategic importance, after 9/11 they expended more than before, on president Bush's initiative and with his large support. The most important program in this respect is the new Department for Homeland Security, merging several former agencies into a single, stronger one, placed under his direct control and human resource management.

Another face of the decentralized executive power is represented by these local agencies, belonging to the member states and having particular means of interpreting both the demands and the solutions. Usually they have to perform the states' policies which are not always repeating or completing the federal ones. Besides, they have the advantage of a direct / a closer contact with citizens, getting much more information in due time as well as feed-back for their accomplishments. If we were to take into consideration Moravcsik' s theory, these state agencies are the ones to implement coherent policies, while the federal ones are only partners in some sort of continuous non-object bargain.[89] Above all, the Constitution says nothing about any exclusive

---

[89] Speaking about the European institutions, he remarked that "Information appears to have been plentiful, with governments better informed than supranational actors. Supranational actors appear to have lacked all the comparative advantages that might make for successful supranational entrepreneurship: more technical expertise, a reputation for neutrality, superior political skill and vision, greater legitimacy, consistently accurate political

or shared powers, therefore we may note that each state – on one hand – and each agency – on the other side – has to write its own Constitution and to have it recognized some way or other, according to the ordinary laws in force.

Inside the states, there is still a subsequent level, the one of the authorities belonging and providing services for counties, cities and districts or townships. "They are statutory creations of the state and can be altered or eliminated by the state. … Thus, local governments have no independent constitutional standing (and are not a form of federalism).[90] However, these authorities have limited means as well as sphere of interest. They are clear evidences of the self-rule tradition and of the need to maintain as many policy making instruments close to their recipients. Since such a trend ought to undermine the strength and the stability of the federal level – which, on the other hand, is expected to provide security and complementary solutions – the supra-state level had 'nationalized the fundamental and political rights'.[91] According to this perspective, the federal authorities may 'limit' the states ones in an indirect way, by means of the citizens' rights. Any time when such rights are violated by a state law but are protected by the federal regulations, since the later prevail, citizens can obtain the annulment of local laws or rules as a result of claiming their rights provided by the federal law. This way, citizens may sometime, feel to be better protected by the federal institutions and they will react offering their loyalty or their electoral support. It is this search for legitimacy and sustainable position that makes the institutions of different levels and powers compete for the limited resource that is citizens' will. Irrespective of their purposes, this opened and unforeseeable competition will have at least one clear winner: the American individual to whom, ever better services will be provided in exchange for his support. In addition, each citizen enjoys two citizenships, according to each level of statality in the United States: the federal one and the state one. This double request is meant to link people to the federation preserving in the same time, their local identity and policy

intelligence.", Andrew Moravcsik, *The Choice for Europe .Social Purpose and State Power from Messina to Maastricht,* Ithaca, New York: Cornell University Press, 1998, p. 479; As a consequence, the main suggestion remains in line: can supranational (in the American case, federal) agencies be more efficient than the national, regional, local ones with respect to policies implementation? Is the global perspective enough? Does it provide enough accurate information in order to turn this kind of agencies in real efficient ones? The author says No, with respect to European supranational institutions. But his argument can stay very well for the relation between the American federal institutions and the states' agencies. Perhaps this is one of the main reasons for which the American states preserve their agencies and are so keen to stick to their own policies, above all the federal inputs.
[90] Mark Kesselman, Joel Krieger, William A. Joseph, *Introduction to Comparative Politics*, Boston and New York, : Houghton Mifflin Company, 2004, p. 326;
[91] Michel Rosenfeld, 2003, p. 360;

alternatives. If we were to adapt the already well-known synthetic formula of most federations, we would say that the American case can be better characterized by being considered a 'diversity (of options) for (serving, working for) a unity (of people)'.

On the federal level, there is, again, not very easy to pursue one institution's interest without getting the help of the others, because in the deep philosophy of the American public system, the separation of powers "is an effort to set government against itself by vesting separate branches with independent powers so that any one branch cannot permanently dominate the others."[92] As a consequence, no single body is really strong by itself and all the theories about government fail to point to the strongest among all. According to the classic distinction, United States is a presidential republic, with a head of state being in the same time head of government and having a long list of competences awarded within the Constitutional text. However, most of them are only diplomatic jobs or appointments that may enter into force only after the approval of the Congress or the allocation of money coming from the Congress. "In terms of formal powers, the president is far weaker than Congress is."[93] The rest is up to his personality, will and skills to improve the data of his part or, to remain a simple administrator of a given order. Usually, there are some external factors facilitating such a personal marked office, like wartimes or special international circumstances. The most preeminent such presidents have been Abraham Lincoln, Franklin Roosevelt, J.F. Kennedy, Ronald Reagan and George W. Bush, with their successes or debatable failures. The president, as the chief executive appoints senior administrators for the key departments, like foreign affairs, defense or the attorney general. They form together the cabinet – but this has no legal standing.[94] The president may include there many other high officials of the US, but there is only a symbolic way in which this body can be considered a real cabinet. In contrast to many cabinets in the world, especially those from the parliamentary systems, there are only some departments represented there, others being the aim of private agencies or companies. So, most of the job is externalized, working in terms of market oriented firms, while the cabinet deals only with very specific fields, considered to be of outstanding importance. Perhaps in this respect, the American cabinet may be compared with the Swiss one, consisting of few people who manage the affairs of some exclusive listed fields. But the comparison stops here. For the American government "is the government of all; its powers are delegated by all; it represents all,

---

[92] Mark Kesselman, 2004, p.320;
[93] Ibidem, p. 322;
[94] Ibidem, p. 323;

and acts for all."[95] This trust, this label of "supreme" institution comes from the fact that the president – who appoints the cabinet ministers – is although indirectly – elected by the people. This argument had been one decisive reason for which strong presidents, like Abraham Lincoln, have managed to get more power and, once with it, to control the most important decisions of the Congress[96]. Therefore, the president can be considered the only one to have full legitimacy from (and accountability to) the people itself. As a consequence, his decisions are to represent the people and are to be in the name of people. Besides, the American political culture is still dominated by the Lincoln's remark about democracy as being the government of all, for all and with the participation of all. Although there is more a representative democracy than a real participatory one, there are more and more spheres in which the people come back as main subject and not only as a recipient of the policies performed by a narrow political class.

To conclude, we may say that the United States executive is restrained and very large in the same time. It consists only of a few high officials which can be seen and checked by anyone, anytime – of course, insofar as the data are available. On the other side, there is a huge bureaucracy supporting them, but also a wide amount of agencies dealing with a complex range of issues which are less obvious but unavoidable if we want the whole system to work. For such a federation with geographic representation (in contrast to a cleavage groups' one), the "size of government may be 'too large' and 'too small' in the same time. Too large if we consider some fields in which the public pressure is very high, therefore means to address everyday problems had to be organized and kept into function; too small with regard to those fields which require a federal position and which really constitute the *raison d'etre* of a federation. In doing so, the American executive will have to rely on the help, loyalty and promptitude of some different actors who, being out of the hierarchy, may find – and usually do so – various sources to acquire influence and support: media, groups of interest, even the Congress. Being forced to resist on the market, they will concede to a flexible, adaptable behavior, which will determine accordingly, the decision making process. Having large competences with respect to lawmaking – of course, in their particular field of interest – they are and will be in the position to challenge the political forces and call them to the Pareto-optimal line of agreement. It follows, that the president with his sound powers has actually limited powers in terms of public policies, namely in those fields

---

[95] Norman, Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003, p. 358;
[96] See Mark Kesselman, 2004, p. 323;

that suppose a permanent contact with the people and a continuous feed-back from the consumers of policies. It will be his quite heavy task to be there, among the people without breaking the constitutional provisions; to support or reject certain policies – where he has a legal say – without turning a certain part of bureaucracy against him and his team; to obtain funds from the Congress even when this body has an opposite majority; and to appoint those judges to the Supreme Court, who will support him inside of the legal framework, even when the reasons will not be very obviously objective[97]. So, his main task is to moderate a free society of autonomous powers and diverse interests, moving free on the market of tools and values and affiliating with each other in accordance to the possibility to pursue their interest and not necessarily on ideological grounds. The balance of all these – political and a-political – forces is, in the final analyses, the supreme exam for any American president and his team. The larger the team, the harder will be to deal with and to seek concurrence. On the other hand, people's capacity to be informed and to relate with the proper agency in due time, is limited. Therefore trust is to replace human skills, and trust is only to be built in time, on grounds of respecting and interpreting the same set of values in the same way.

While "the executive Power shall be vested in a President of the United States of America"[98], there is also the symbolic power that people offer him as well as the strategic power coming out of the demands of his position. Only the other powers have been separated, according to the fundamental law. Therefore, it is him to decide (in emergency cases, even without having time to wait for the Congress to approve), it is him to evaluate the circumstances but also him to get wrong. This is why we can say that the President is a weak power according to the sole text of the Constitution, but the strongest as soon as we follow the subsequent legislation and the specific requirements of each of his duties. In essence, the United States of America is a presidential, territorial federation, with a large diversity legally considered to be a homogenous society, with a wide ramified executive and a very small immediate visible cabinet.

---

[97] See Jeffrey A. Segal, Albert D. Cover, *Ideological Values and the Votes of US Supreme Court Justices*, in 'The American Political Science Review', vol. 83, No. 2, (Jun., 1989), pp. 557-565;
[98] The Constitution of the United States of American, section 2, article 1;

2.4. Germany

""Conscious of their responsibility before God and Men,
animated by the resolve to serve world peace
as an equal partner in a united Europe,
the German people have adopted,
by virtue of their constituent power, this Basic law."[99]

With such a Preamble and such a multiple commitment, the German people seem to notify once and for everybody that they have decided to go for their new identity and position in the international arena, far from anything that threatened or may still make suspicious any other people. "The German problem" is to be locked in the history and the new German policy be considered a totally different from the black memories of the last century, grounded on complete other values and desires. In this respect, there is not only a long paragraph in front of the Basic Law, but an attempt to produce the most explicit definition of the present day essence of German political philosophy and with respect to the German presence in contemporary disputes.

It was and is the advantage of certain cultures to be more influential than others and determine certain options and affiliations. With the German one we are in such a case that transformed the early medieval empire into a strong power generating and shaping values, perspectives, systems. It was no need for a strong state to support or protect such a process, inasmuch as the force of ideas and behaviors determined people to remain loyal to this type of *Weltanschaaung* and interpret the historical, temporary demands in terms of this paradigm. As a consequence, the culture was the ground for a state to be 'invented' and preserved, the culture was the reason to be loyal to this political unit or to consider the task of serving it, *a profession, not a job [100]*. Later on, respecting or rejecting this pattern, "German federalism has become one of the most imitated systems in the world among newly democratized countries."[101] Since it has been an EU member from the very beginning and due to the German leaders who very much promote the federal project, this federalism may be (come) a desire or a pitfall for the Europe to be. Being a success story, being placed in the centre of the continent but especially in the middle

---

[99] Preamble to Basic Law for the Federal Republic of Germany;
[100] Mark Kesselman, Joel Krieger and William Joseph, *Introduction to Comparative Politics. Political Challenges and Changing Agendas*, Boston and New York: Houghton Mifflin Company, 2007, p. 173. This qualification is very much indebted to Max Weber's theory on bureaucracy and even more, to the Prussian interpretation of the role of bureaucrats in the state administration.
[101] Ibidem, p. 178;

of the debates, programs making and innovations, the German structure is to be well understand both in terms of suggestions for and of incompatibilities with the European needs. And the most important element that may inhibit any automatic implementation of this model in shaping the European system is the high homogeneity of its population – 91.5% German people, speaking German language[102].

There is no way to consider the German society a pure homogenous one, but there is a huge difference from the plural societies. In this case, there is mainly a single language – with dialectal varieties, but, still, a single idiom, raising no questions for the designation of an official language, for that of instruction or, even worse, there is no ground for any linguistic conflict. The immigrants and the Europeans who decided to live there are still, minorities with no incentive or power to organize any kind of opposition in these terms. With respect to religion, there are two main, traditional religions almost equal represented: the Catholics and the Protestants, having already settled their conflicts in time and also proving no desire to go for any kind of conflict. Besides, according to the Constitution, there is no state religion, this issue being a private one. Therefore, the only disputes are – and can be – in political or economic terms. In the end, everything is a problem of interpretation of the same rule in accordance to different local traditions or habits. In this respect, we may say that Germany's diversity is very much different from Europe's one and from most of federal systems today. This is why, any promising solution from working well in the German system is to be adequately analyzed and adapted to the European diversity before it may produce unexpected disequilibria.

The institutions of Germany recommend it as a parliamentary democracy[103] with a mixed system of voting. The parliament consists of two Chambers: Bundestag and Bundesrat, representing – as in any federation – the people and, respectively, the *Landers*. In contrast to the Swiss formula, the German *Lander* have allocated a number of seats in some sort of correspondence to their population. As a consequence, the larger *Lander* can influence both chambers and can have their voice determining the federal policy. But since the implementation is a matter of interpretation, doubled by a large autonomy for the *Lander,* it seems that this asymmetrical representation is not a crucial issue. On the contrary, *Lander* are much more used with their own parliaments and executives, as well as they are very much concerned in realizing

---

[102] Ibidem, p. 147;
[103] Ibidem, p. 171;

their own policies. In addition, their almost half century experience in regional and euro-regional policies gives them a large room to develop and implement all kind of programs they consider being useful in their space.

In terms of vertical cooperation, there is a strong inter-connection between the federal level and the Lander (and cities), since the latter have the monopoly (articles 83-86) and responsibility for most of the policy implementation. While in lawmaking, the Bundestag has most of the competences, the policy making is dependant on the interpretation as well as on the resources and need of the Lander to implement. The states are only consulted in the process of regulating, but they can veto in the Bundesrat "those laws that affect the administrative duties of the *Lander*.[104]" Their own regulative powers[105] are very much limited and they depend on the federal Parliament in this respect. But the agencies belong to the states, the federation having only the possibility to take measures to control or ensure that the laws are faithfully executed. This is why the German system is considered to "lock the two levels of government – *Lander* and federation – into a position in which neither can dispense with the other in executing any policy of significance."[106] While the federal issues belong to the exclusive rule and right to regulate of the federation, the most important aspects of everyday life and policy making are subject of the shared rule, in which both levels have to cooperate in order to produce the proper regulation both with regard to the problem and to the means of enforcing the law. The Constitution lists only two levels: the exclusive rule of the federation and the shared rule, while the *Lander* will decide only in remaining fields, but in accordance to the rest of legal system. In the first group, that of federation's exclusive competences (art. 73), one may read: foreign affairs, defense, federal nationality, freedom of movement, trade treaties, transportation and communications, statistics, *Lander*'s protection. Concurrent legislation (art. 74), needing both the participation of the federal level and of the *Landers*, includes: civil law, criminal law, right of affiliation, *Lander*'s nationality, property rights, commercial law, labor law, research, war victims, refugees and expellees. Due to this enhanced mutual dependence, Germany is considered to be a cooperative

---

[104] Daniel Halberstam and Roderick M. Hills, Jr., *State Autonomy in Germany and the United States*, excerpt in Norman Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003, p. 367;
[105] "Article 72(1) of the Grundgesetz provides that *Lander* may exercise concurrent powers "only so long as and to the extent that the federation does not exercise its right to legislate", Ibidem, p. 368;
[106] Ibidem, p. 369;

federation, in which shared rule is the basic means of governing, while the exclusive rules of either the federal level or of the component units, are covering restrictive areas.

However, the local authorities that are considered to have much more expertise and direct information will enjoy support and legitimacy. They usually mobilize banks, local firms, organizations of labor or business to increase their incomes and on this ground, their policy making powers. A delicate problem is that of education and culture. While for a long period, education had been the prerogative of the Catholic church, the process of modernization as well as the concurrence of the Protestant wing of society worked for the separation of the two and subordinate schools and culture to the state. As a consequence, in Lander where the Catholics have some sort of bigger power, they will try to get back – at least – some of these means of shaping the German identity while in the others, the state education will be more secular or neutral oriented, it is said – more pragmatic and efficient. Since culture had been the most important tool of defining the German spirit, the one to fund it is/ will be the one to suggest or propose the values to be embodied and disseminated. Besides being a source of knowledge and of jobs, education is the means of (re)defining identity and societal culture, actually the grounds of German politics. It will be the tool of balancing and of pushing society ahead.

Another basic feature of Germany's system is the functioning of the cabinet, with special emphasize on the role of Chancellor. Following a half Westminster system, the federal chancellor is appointed by the president and approved by the Parliament, usually being the chief of the winning party (coalition). In this respect, he will be not only the chief executive, but, also the person to control the Bundestag's decisions. Having the parliamentary majority on his side, the chancellor will be in the position to pass whatever legislation he will consider to be necessary, with the only bound coming from the Bundesrat, where it may be the case of another majority than that of his party. On the other side, he will select and propose the ministers, the structure of the Cabinet as well as the components of his Chancellery. Depending on the personality and leading style of each chancellor, this service will be more or less influent, but, nevertheless, it may strongly influence his decisions or behavior. The Cabinet consists of ministers having a large autonomy once they are sworn in and a strong commitment to maintain the structure, the competences and the degree of freedom of their department. Here is the place for the old roots of bureaucracy to prove their strengths and to provide new generations of civil servants trained in accordance to the tradition and the German ethics. Despite their efficiency, these civil servants

are usually considered inflexible and rigid in their office[107]. Perhaps the long history of disputes and radical transformations of the German society is now motivating each of them to keep strict to the rules, as to the only guarantees of their success and freedom.

Nevertheless, the Chancellor with his Chancellery have large powers to determine the Cabinet agenda and even working style, since the ministers are selected both on merits and loyalty to the chancellor. Usually, they have been all, top politicians at the local levels, they know each other and the chancellor will have the discretion to select those professionals whose abilities and commitment seem to meet his (most subjective) expectations. Moreover, due to the failure of Weimar Republic to maintain the country in the democratic sphere, the president has only diplomatic and ceremonial power. "German presidents are almost always retired politicians who are moderates within their respective parties and thus broadly acceptable to the electorate."[108] Their tasks will belong more to the foreign affairs field and to the emergency cases. On this ground, the Chancellor acquires more and more competences, leading to what is considered to be "the presidentialisation"[109] of the prime minister. Some of the signs that such a process in on-going are: "a significant increase in the impact of individual leaders on the outcome of parliamentary elections; the increasing involvement of Prime Ministers in international 'summitry'; the growing importance of extra-parliamentary media strategies; a growing detachment of the Prime Minister from government, both in functional terms and with regard to the perception of the executive decision making process by the media and the public at large."[110] As a consequence, the separation and definition of powers comes to be more flexible and turns to a reconfiguration of governing relations. In systems like the German one, with a large autonomy for each Minister and a strong Chancellor, efficiency and opportunity of policies prove to be more important than the traditional denomination and hierarchy of competences. On the other hand, this flexibility is possible in the framework of three principles: *Kanzlerprinzip*, *Kabinettsprinzip* and *Ressortprinzip*[111]. The first one encompasses all the competences of such a powerful Chancellor, namely "to make ministerial appointments forming the government; to

---

[107] See Mark Kesselman, 2007, p. 173;
[108] Ibidem, p. 172;
[109] See Ludger Helms, *The Presidentialisation of Political Leadership: British Notions and German Observations*, The Political Quarterly Publishing, 2005;
[110] Ibidem, p. 431;
[111] See Renate Mayntz, *Executive Leadership in Germany: Dispersion of Power or "Kanzlerdemokratie"?*, in Richard Rose and Ezra N. Suleiman, *Presidents and Prime Ministers*, Washington DC, American Enterprise Institute for Public Policy Research, 1980, pp. 142-143;

organize the executive branch that is to establish and change the number and jurisdiction of the federal departments; and to formulate general policy guidelines." Due to these outstanding powers and to the above mentioned tendency to presidentialisation of the chancellor office, the political regime in Germany started to be called a '*Kanzlerdemokratie*', in order to emphasize the central role of the prime minister. Actually, following the British pattern, the Chancellor becomes gradually The Chief, acquiring all the major powers and competences and being growing harder to limit or control his decisions. Perhaps here may be one important reason why the Europeans fear of a possible reproduction of the German rule to the European Union level: the possibility for a single person to become too powerful and get paths stay apart from a continuous check and balance exercised by the other powers.

The principle of *Kabinettsprinzip* means that all the decisions are to be taken by the Cabinet as a collective body, holding the ministers from manifesting dissent opinions or attitudes. The idea of team is the counterpart of the autonomy, meant to maintain the stability and continuity of a certain rule, despite of specialization or individual interests. After all, the medium and long run interests are more likely to be supported in such a paradigm than everyday incentives with little or, even, no ground to survive and produce consistent effects. *Ressortprinzip* is, perhaps the most comprehensive result of long time institutionalization of self-rule and bureaucratic discipline. "Every minister is personally and fully responsible for the activities of his department. Within his sphere of jurisdiction, he cannot be given specific orders, not even by the Chancellor."[112] Every minister is, hierarchically structured in divisions and subdivisions which do not have much power out of the structure. Since some of the competences are the exclusive part of local executives, the federal Cabinet is strong and weak in the same time. It is strong in terms of possibilities of innovation under a large autonomous umbrella, but it is very weak with respect to real possibilities to implement and get the feedback of the policies envisaged. The policy making is shared between these levels of government and each of them needs the consensus with the other one in order to succeed in its projects.

Still in the executive branch, there are some *semi-public institutions*[113] working in corporate style which includes private policy making actors and government representatives. These bodies are powerful and efficient, aiming and managing to solve a complex range of tasks

---

[112] Ibidem, p. 143;
[113] See Mark Kesselman, 2007, p 174;

51

from a given field, like health insurance, education or banking. With an organizational culture tracing many centuries back, these agencies are working as (neo) functionalist tools avoiding macro-politics in their deal with public interest and their search for public good. Being out of the political sphere, they manage to obtain funding from various sources, both governmental and private and to shape their activity starting from the public demand. As a result, the demand is the one to configure their activity and the search for money is only one objective in the whole arrangement, instead of starting with an ever limited governmental budget to see what can be accomplished on its ground. Starting from Bismark's leadership, the welfare state was somehow a continuous goal of the German politics, but welfare can not rely only on government's involvement. The private sector as well as the rules and decision to cooperate are to be there to contribute, to complement or, even to replace the cabinet's office, since decentralization and autonomy are incompatible with a fully involved executive.

In the end, cooperation and professionalisation may be considered the key concepts of the German executive. The more people are involved in this activity, the more accountability will have each decision and policy making body. Besides, the corporate structure enables representatives from different social levels to get informed and be part of a process whose effects will influence their own lives. On medium and long run, this kind of rule is some sort of school of ethics and also a means to shape a cooperative social culture. With a permanent check and need for the other one's participation, the chances for extreme solutions and social experiences are very low, maintaining the German society in the centre of the political spectrum, and thus focused on solutions seeking and implementing. The main lesson to learn from this system is that of agencies assuming social tasks and complementing the executive's action.

2.5. Does Europe have something to learn from these systems?

> *"Her Majesty the King ... The President ... The President ...*
> *Her Majesty The Queen ... The President ...*
> *desiring to complete the process ..."[114]*

Or, perhaps, the title should be reformulated in terms of: '*Is Europe in the position to learn something from these systems?*' Does European Union have something in common with

---

[114] Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007;

any of these? On the other hand, even so, is anything transferable from one system to another one? Should EU simply take something from other structures or it being faithful to its traditions, will innovate once more and offer the world a new type of institutional paradigm? Is such a paradigm possible?

I have already presented four systems from three continents, apparently with very few issues in common. India is a former British colony, but also a long lasting civilization, having specific stable and sustainable institutions much before the first Europeans landed in the subcontinent. Its present-day structure is a blend of British legacy and national attempt to modernize, to adapt the political and legal system to the demands of its multilayered diversity From a majoritarian paradigm the Indian system started to move slowly towards a proportional system, opening the room for many kinds of groups and tendencies and thus, integrating little by little, various faces of that society. We may say that all the major shifts that took place in the Indian policy during the last half of century have been part of this trend. Here is the reconfiguration of states' borders along with the linguistic lines, the process of power sharing between the federal and the local authorities, which gave legal standing to many levels of governance and hence, gave voice to various combinations of religious, linguistic and political groups; the decentralization of policy making trough decreasing the effectiveness of the governors in the member states backed by a more and more responsible action of the regional or local authorities. Despite of all the efforts of the former colonists, despite the insistence with which they tried to shape the political culture in the states included in their empire, despite even the difference in terms of approach to the modern type of politics, the 'row material' was/ is so much improper for the two party system, that it had to leave aside and allow the reality to (re)configure a paradigm for the Indian system. This is the best evidence that in a multiple society, the majoritarian system has no means to develop as dominant solution, even if backed by many political forces or it may seem to provide some effective answers

Switzerland has a long history of independent and autonomous political units which have fought against each other or agreed to support a common position, depending on the surrounding framework. These units have had the chance to learn from the big nations bordering them and also to become aware of the value of their independence. Freedom and identity have been gradually considered as ultimate issues on behalf of which anything could and should be sacrificed, in the name of which any compromise is a royal path while all the other disputes ought

53

to be subordinated to the need to preserve these principles. In this respect, a majoritarian system was not to be considered, since it represents the other way round. Instead of ('a tyranny of') majority with a single-party government, the Swiss people preferred the poliarchy of minorities and nuances, the wisdom of cooperation and agreement as the only safe source of stability[115]. Now, we can acknowledge all kind of debates about the long run sustainability of such a rainbow, but nevertheless, up to now, it helped this society to stay apart from many types of conflicts that nowadays, threaten to divide communities and states. Therefore, the consociational option turned the Parliament into an overall agora for all the positions that may arise in the society, while the small (con) federal cabinet has only a weak voice. Leaving very few powers in the hands of the (con) federation, local authorities managed to balance various interests and bring them into a common trend. This is why we have to remark that the multilevel governance together with the strong commitment for the *unity to protect diversity* have strengthened the nation around some common ideas avoiding the risk of centralization or, on the contrary, of opting-out of the structure.

The United States have been set up on the premise of 'a people', a unitary and homogeneous one with respect to a federal identity into building (at that time, but perhaps, still taking place). On this ground, differences between various (religious, linguistic, ethnical) groups became a private issue, in the best case a question for the local authorities, while the power sharing debate took place mostly with respect to the horizontal level. In this way, the pair: private-public had to encompass the cleavages sources, to self generate and to enforce the 'list' of exclusive powers on the vertical scale, while the constitutional debate could have focused on delimiting and describing the branches of the federal government. From this federal perspective, there is a single nation, seeking universal defined rights as well as tools to enforce them. In this respect, politics occupied the main scene and a two-party system proved to be enough for the general debate, for improvement and flexibility. Therefore, the Congress has a strong position with respect to controlling the cabinet and timing the changes while the executive come first to assure the management of the federal issues. It looks like a post-agreement society, in which *history is over* and all that remained is the governance of the public will. In such a case, the main

---

[115] "The consociational solution accepts the plural divisions as the basic building blocks for a stable democratic regime", Arend Lijphart, *Democracy in Plural Societies,* New Haven: Yale University Press, 1977, p. 45;

deontic power should remain in the hands of the cabinet, while the power to do things can be delegated to (more or less) autonomous agencies.

Germany was from the very beginning a homogeneous society, with only few territorial differences which are not so deep to generate irreconcilable conflicts. Confessing the same tradition of local self-governance as the Swiss Cantons, it has as main *raison d'etre* the protection of this autonomy and the provision of an appropriate framework for the *Lander* to fulfill local public expectations. On the other hand, it was the cultural homogeneity to be defended and on this ground, the unification problem had occupied the main positions of the political agenda. While the Swiss diversity slowed down many attempts to move on towards a stronger unity and is still keeping the counter-balance of any uniforming reform project, in Germany it happened exactly the opposite. The traumatizing experiences of the last two centuries have pushed this society to emphasize the common features of the *German nation* and build a state in the name of this nation. Since the religious, cultural or even social issues have been handled by the *Lander* for so much time, and there is no linguistic question, the federation is expected to strengthen the nation both in domestic terms and in contrast to external factors. As a consequence, the vertical division of powers has only to follow the experience and the principles that have shaped it, in time. The federal executive has to limit itself to the powers conferred by the Basic Law, namely to sustain the *Lander* in their public policies and, on the other hand, to fulfill a certain list of tasks, on behalf of the nation. While the Parliament, elected through a complex set of rules, enables the various positions to be expressed, the cabinet is and should be the leading body, to enforce and monitor the rules and the principles already agreed. The agreement is not a question of bringing together some very different positions, but of converging interpretations to come from roughly close positions. This is why there is no real need of Grand Coalitions and they are formed seldom, as consequences of a punctual crisis. It is all a matter of tools, which usually differ according not only to the domestic situation, but also in correlation to the external environment. With a strong background of clearly defined principles and long run objectives, (who are the origins of so many conflicts elsewhere), the German political class has the chance to deliver positions on the means of applying certain politics and not of a continuous re-invention of the grounds of decision. On the contrary, having these roots, the task is to drive the system inside its clear defined path. And this is a specific topic for a powerful cabinet

We may already notice that in the societies where diversity is not an issue – either because of an external factor or on the basis of a common set of principles – the decisions are much more in the field of applying certain programs, enforcing decisions or management of different projects. This situation leads to the request for a strong and professional cabinet, with a majoritarian support in the legislative. There is usually the case of a two-party system (or, as in Germany, of a two coalitions of parties) to produce an effective and self-supporting leading mechanism. "A corollary trait of two-party systems is that they tend to be one-dimensional party systems: That is, the programs and policies of the main parties usually differ from each other mainly with regard just to one dimension, that of socioeconomic issues."[116] On the other hand, in plural societies there will be always a problem of defining and re-defining the grounding issues, and hence, the legislative is to be the major body. Its seats are to be occupied by a large variety of representatives of all kind of sub-cultures composing the given society. Therefore, the consociational option will be the way out of the labyrinth, since it enables the groups to take part in the deciding mechanisms and control or limit the possibilities of the others to change the agreed framework. The continuous fear from assimilation or ignorance, the need to affirm certain identities will be asking for a permanent debate on the values and opportunities, on the choices or programs. And here is the case for the Parliament to be the strongest political body.

Type of society	Homogeneous/ uniform societies	Plural societies
Main concern	Enact policies; preserve a structure; policy making; 'concrete' oriented decisions;	Debates on main values, principles, aims; 'abstract' oriented decision making
Main political body	Cabinet/ executive	Parliament

In the case of the European Union, still facing many uncured wounds and vanities, with a large and multilayered diversity, there is no room for a strong cabinet! The unity may – in the best case – be drafted in terms of principles or of specific difference to the other supra-national regions in the world The identity crisis and the need to preserve some residual – at least, symbolic - sovereignty will require a parliamentary system, with a clear rule of representation and power holding or, with a detailed procedure to reformulate these rules, as soon as it will prove to be necessary. Stability in this case, presupposes a consistent set of regulations to balance

---

[116] Arend Lijphart, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven and London, Yale University Press, 1999, p. 14;

various trends and give a hand to each group to influence / to determine the policies affecting it. Since there is no 'European people' (in the sense of an 'Indian' people or a 'German one'), we may consider that every group is some kind of minority, whatsoever. As a consequence, the consociational regime is the only one to allow these minorities to find a way to be (come) part of decision making, without seeking to exit out.

Moreover, since there is nobody to still dream about a single nation in Europe or about a possible definition of a supra-nation, specially drafted for this purpose, we are still in a deadlock. Some member states host many minority groups, with particular societal cultures differing from the main one in that country. For some of them, clear borders can be designed and, hence, rights can be provided accordingly. In other cases, the borders cut each other and overlap different kinds of minorities. This is mainly the case of what Ernest Gellner[117] described as the third meantime zone in Europe:"a very complex mosaic of diverse cultures, mixed both from the geographic point of view and from that of the social structure, where the political, cultural and religious borders have been disapproved by any coherence or mutual support."[118] In addition, due to the freedom of movement, in the coming decades, the European population may be much more mixed than it is today and clear borders of some 'cultural constituencies' will be even harder to draw. In this case, who is to be represented and how to define the correlation between a certain group and its representatives? The democratic demand of some sort of direct participation and voice in the regulation procedures, make the 'personality principle'[119] of the non-territorial federalism almost old-fashioned. Cultural rights are desirable, but they can not replace the political and civil ones. Therefore in the European Union, some ways to protect each minority in terms of these first generation rights will be/ are of crucial importance. Two main issues still challenge this aim, namely the weak role of the regions on one hand and the competition with the British principles. In terms of the first question, the Council is now, representing the member states, often accused to decide or act against the interests of the domestic minorities. In an attempt to protect them, the European Commission is funding all sort of projects with direct

---

[117] The same delimitation is to be found in Urs Altermatt, *Das Fanal von Sarajevo. Ethnonationalismus in Europa* (The Provisions from Sarajevo. The Etnonationalism in Europe, Zürich: Verlag Neue Zürcher Zeitung, 1996) Iasi: Polirom, 2000, pp. 45-47; as well as in Dominique Schnapper, *La communaute des citoyens. Sur l'idee moderne de nation* (The Community of Citizens. On the Modern Idea of Nationhood, Paris: Gallimard, 1994), Pitesti: Paralela 45: 2004, pp. 161-166;

[118] Ernest Gellner, *Conditiile libertatii. Societatea civila si rivalii ei* (The Conditions of Liberty. Civil Society and Its Rivals, London: Penguin Books, 1996), Iasi: Polirom, 1998, p. 115;

[119] This principle allows each individual to opt for a certain nationality, leading to an overlapping network of cultures and minority groups. See: Arend Lijphart, 1977, p. 43;

application in particular regions but this policy tends to become a parallel means of governance. The states are benefiting indirectly, due to the welfare of their constituent regions. On the other hand, there is already a hidden rivalry between the states and the regions, in terms of attracting money and performing in an autonomous way, their own programs. Is this support for regions to become an alternative to the dominance of states? How far will it go and how much of it will the states accept unless their authority will be seriously decreased? From a pure theoretical perspective, the states have the power to decide, but the regions obtain more and more funds, even without having a decisive word[120] in making decisions. So, they have the power to apply, to manage their own projects, while the states have to balance between domestic interests and communitarian tasks. So, the states are in the middle. On short run it seems that they can still control their position, but on medium and long run, the growing powerful regions may seriously question this status quo. They may get veto power as in the case of Swiss municipalities or may simply undermine the strength of states trough the welfare and stability they will be able to provide. If the states will try to limit the region's ascension, they may face even the request of the later to become part of decision making process, addressing serious reforming demands to the Council as well as to the legal system.

Here is the point where the British case enters loudly the picture and asks for moderation and punctual compromise. While in domestic issues, the either-or variant dominates the political scene, in the European Union's affairs, they ask for slowing down the integration process and for a fan of alternatives related to every single problem. According to their tradition of precedent and permanent creation of law, the British leaders would rather opt for a continuous redefinition of objectives and exigencies. This position will push towards the need for a stronger executive and weak powers for the Parliament, if any substantial ones. With respect to regions or municipalities, the self-governance is not only unusual, but also a peril for the system. Therefore, we should note that the (already) traditional reluctance of London with respect to EU' s policies is not only a question of British pride and / or fear for their sovereignty, but may be a serious test for the consistency of the communitarian system.

"The continental European systems are characterized by a 'fragmentation of political culture' – that is, they have mutually separated 'political subcultures' – and a role structure in

---

[120] According to the EU treaties, the Committee of Regions has only a consultative role and only with regard to those policies affecting them directly.

which "the roles are embedded in the subcultures and tend to constitute separate subsystems of roles"[121] In the same time, "the Anglo-American systems are characterized by a 'homogeneous, secular political culture' and a 'highly differentiated' role structure"[122]. It follows, that the continental Europe will go for a clear sharing of powers between the vertical dimensions, while the British leaders will consider the horizontal separation to be more important. I don't mean that one type should exclude the other, but the emphasis on one or other of these dimensions is responsible for the competences of the national (local) authorities as well as for the type of federation to be produced by the given society. As a multicultural, multilayered society, the European Union has only the variant of a (future) federation on regional grounds (using Kymlicka's terms). In this pattern, the sub-federal levels do have exclusive powers as well as some shared/ concurrent powers with the federation. Any control or interference of the later in the states' governance will be considered as an abuse or attempt to suspend some of the exclusive competences in the view of a more centralized system. When the society is homogeneous, there is usually no reason to worry because there is a single political and administrative culture to generate expectations and tools to fulfill them. This was somehow, the case of India immediately after independence, not in real terms, but as the outcome of the new statute. As soon as the issue of independence lost its weight, the temporary ignored differences came into picture and reframed the whole political debate. In the American case, the assumed uniformity was enough to configure a strong presidential system. But such a system in Europe should not only be inappropriate, but also against the whole post- war philosophy of integration.

One way or other, all the federations token into consideration in this study have emerged on the traces of some wars: the Indian federation as well as the American one, come out of the war for independence from the British dominance and define themselves mainly in terms of this difference; the Swiss Cantons have to follow this path to preserve their independence from the neighboring powers but also from the constraints of the inner cleavages; the German federation represented the way out of the control of Allied, namely the control of Others. While the identity of these *Others* proves to be hard to be defined in the EU today (without supposing that there are no Others to play the role!), the inner enemies as well as the British otherness are still in line. It is not by random that the intergovernmental option has many supporters on the island and the

---

[121] Arend Lijphart 1977, p. 6, with author's quotations from Gabriel A. Almond, "Comparative Political Systems", *Journal of Politics*, 18, no. 3 (August 1956): pp. 391-409;
[122] Arend Lijphart, 1977, p. 6;

separation of powers is very much challenged by the different interpretations to this topic. However, is the EU is to protect itself from these risks, it will have to learn the consociational Swiss lesson and accommodate many diverse options into an effective federation. Above all the possible aims, it has to enforce the idea of unity and to define proper principles to support it on long run. When such an identity will come to be clear for anybody, the shared and exclusive lists of competences will no longer be an issue, but a natural outcome. It will also provide answers for the degree of integration, Eastern borders, religion-state relation or place of Europe on the global arena.

Therefore, does Europe have something to learn from these federations? I would say *yes*, in terms of the need to formulate its identity and shape the political and legal system accordingly; *yes*, in terms of opening the floor for the regional and local self-governance, for a more flexible and manageable administrative structure; *yes* in terms of understanding its diversity as a source of richness and permanent balance, as a welcome guarding eye against all possible attempt to monopolize and assimilate, to ignore or transform on external grounds. Its whole memory being full of misunderstandings or demands for absolute power, the EU will have to shift towards a permanent adaptation and openness on the grounds of a mature assumption of its real statute. With an executive enforcing the collective made decisions, searching for efficiency and sustainability, Europe will finally face the chance of a stable, satisfying structure backed by the support of population. There is the Parliament to be given real powers and also rules of accurate representation to speak for everybody and for all, leaving the executive to be the optimal manager of the complex net of demands and multi-level possibilities to address them.

Comparative   Perspective:

Issue	India	Switzerland	United States	Germany	European Union
Founding war	1947, anticolonial, anti-British	1848, religious with modernizing aims;	1776, anticolonial, anti-British	1st, 2nd World Wars + Cold War Nationalist + ideological	$1^{st\ and}$ 2nd World Wars + Cold War Nationalist ideological
"Engine"	Gandhi, movement for independence INC	Protestants + desire to stay together	Trust in freedom and democracy	Christian - democrats	? (see the debate on intergov./ supranat.
Religious cleavages	Yes	No more	No, but with emerging potential	Not on federal level	Not directly observable
Linguistic cleavages	Yes	Yes	No	No	No insofar as there are legal provisions
Ethnic cleavages	Yes	Yes, Immigrants	No, but with emerging potential	Yes, Immigrants	No, but emerging potential
Diversity	Diversity in unity "salad bowl"	Diversity in unity	Unity "melting pot"	No	- (Unity in diversity)
"Authors" of the Constitution	The people	The Swiss people and the Cantons	The people	The German people	The states
Reference to God	Secular state	Yes	No	Yes	Deleted
Citizenship	Unique	Multiple (three)	Double	Unique (possible double)	Unique, but national
Political system	Westminster, moving to proportional	Consociational parliamentary democracy (direct)	Presidential democracy	Parliamentary democracy	?
Strongest person/ body	Prime minister	The Cantons	President = Prime-minister	Chancellor	The Council
Veto players	Regional or Small parties	Municipalities; Cantons	Branches of government	Bundesrat	National states

Shared-powers	In the Constitution	In the Constitution	Not mentioned in the Constitution	Constitutional	Treaty of Lisbon
Type of federation	Territorial, cooperative	Executive	Territorial, competitional	Cooperative	?
Referendum	Not used	Largely used	Not the case	Seldom	?
Particip. in internat. affairs	Non-aligned movement; Nuclear bomb	Neutral	Super-power, Nuclear bomb	"civilian power"; slightly coming back	?
Borders	Mostly natural, isolation	Mostly natural, isolation	Human designed	Historically modified and established	?
Main common issue with the EU	Need to invent its own system (path, variant)	Kind of cleavages; Cantons and EU regions	Federal institutions helping local authorities;	Common roots; -locked between 2 levels;	
Main difference from the EU	Size, religious issues	Size, capacity of compromise	Size, decen-tralisation, autonomy of agencies	homogeneity	
Strenghts	"identity belongs to the Union"; Patience; sense of right means	Local loyalty; capacity for compromise	Competitive federation	Trust in the power of a strong Chancellor	"locked in" economies Desire to go on; multiple choices
Weak points	Pending linguistic conflicts	Pending linguistically based conflicts	Too much external oriented	Still to defend "the German problem' issue; - new Lander	Deficits of identity, institutions democracy
Chances/ Opportu-nities	Proportional democracy, decentra-lisation	To compromise "with the challenges of future"	Retreat from Irak (?) and other operational camps	-good economic mechanisms; -Grand Coalition;	Deep reform
Risks	Centralization & cleavages	Pitfalls of consociation-nalism	Ethno-neutrality; large bureaucracy	Leader's vision and choices	Enlarge-ment with few deepening

Chapter 3: The EU's Institutions: The Commission

3.1. The European Union's Institutions[123]

      The European Unions' main institutions have been set up from the very beginning of the unifying process on the continent, undertaking gradual changes from one Treaty to another. Their aims as well as their competences have been defined according to the purposes of the initial Communities – which were actually, regional organizations. Therefore, these institutions have been destined to carry out the provisions of the Treaties' and to help the member states cooperate to fulfill the aims of their agreements. With or without any federal intention, the fathers of the Communities have drawn the institutions as supra-national tools, giving them power to monitor and decide whatever they would consider to be proper for the protection of the Treaties' values and goals. The only "difference" which could have signaled that it is not the case of an organization, but of something more, was that the treaties as well as many items of legislation or the decisions of the European Court of Justice were imperative, binding the states to follow a common path and a uniform interpretation of the rules. Irrespective of the grounds of the initial setting – was it neofunctional, federal or just in terms of states cooperation – the Communities have been endowed with the whole spectrum of institutions and rules to ensure the most appropriate fulfillment of what the member states expected from them, especially in that uncertain environment. As a consequence, between 1952 / 1958 and 1965 (the year of the Merger Treaty), each Community had its own legislative and executive meant to decide and to enforce the decisions in the member states.

      Only the Court of Justice had been common to all of them, as a 'guardian of the treaties'. Its task was to ensure the interpretation and follow up of the communitarian legislation. Given been the direct applicability character of its decisions, the Court has been ever since, the most important and effective supranational institution and, in critical moments, even the engine of

---

[123] See John Van Oudenaren, *Uniting Europe. An Introduction to the European Union*, 2nd edition, Lanham, Boulder: Rowman and Littlefield Publishers, Inc, 2005, pp. 78-97; Octavian Manolache, *Drept comunitar* (Communitarian Law), Bucharest: Allbeck, 1995 (2001), pp. 75-116;

European integration. Following its initial statute, it has worked out to strengthen the *acquis communautaire*, both by defending its provisions and by offering that kind of interpretation that leaded to producing effects, namely to binging parts more and more together. Looking for the best way to deal with the particular interests that might have tried to avoid a full or proper application of the communitarian legislation, the Court became a source of law for the Communities as well as for the member states, where it influenced the regulative process and helped to building of a *European* perspective. Underlining the importance of the communitarian institutions or provisions, it pointed to the source of solutions and pushed the people to think in broader terms. Since it allowed the individuals – be they physical or moral persons – to sue the Court and be active subjects in cases of violation of the Union's law, this institution made people learn these laws and feel better protected in this more comprehensive framework. On the other hand – or, perhaps, as a consequence of the above mentioned issues – the states have not been very happy with the Court's activity, trying to change its role or the statute of its decisions. It is well known that in the time of UK's negotiations for joining the EC, its leaders asked for a shift from direct applicable character of the Court's decisions to a more relaxed, recommendations statute, which could not bind the member states. But in such a case, it was not only the text of the Treaty to be changed, but also the entire philosophy of having a neutral, objective but credible institution to check the fulfillment of the Treaty's provisions. A recommendation may be followed or not by a member state, leaving too much discretion to a subjective person – that is the given state. The other request that of limiting the sphere of Court's competences would have left, again, too much discretion to the involved institutions or states that violated the rules. This is why we may say that the Court managed to prove its efficiency and obtain the states' support, even when it decided against some of these states. The need to have the Treaties followed, above any dissentient position and to have a neutral eye over all that was/ is going on inside the Union proved to be stronger than the request of three new members: UK, Ireland and Denmark. The European countries are, already, too much aware of the risks implied by a biased judge, so the frequent attempt to change the functioning of the Court have remained with no consistent effect. On the contrary, in 1989 the Court of First Instance was established in order to take some of the burdens from the Court's agenda and make the justice – making process more flexible. And the picture had been completed in 2004 with the Court of Civil Service, a more administrative-oriented 'section' of the Court.

Without exceeding its competences, the Court sticked to its initial position – that of guarding the Treaties' provisions and so, it turned to be the most efficient means by which the Union had been created and kept together, the clearest map of the route from three different – more or less specialized – Communities to a single Union. On one hand, the trend is to share powers with the national Courts under some domestic issues or in those fields where the Union has shared competences with the member states. This would lead the Court to the position of either a Supreme Court or a Constitutional one. But this slide to hierarchy expected to include the national Courts is already an attribute of a federative Court – dealing with the federal legislation, while the national bodies would remain to judge on domestic issues or on those considered to be shared with the European Court. But this kind of lock is / has already been criticized, as the outcome of a tyranny of European judges or a legal dictatorship over the member states. This is one of the reason for which Switzerland is reluctant to joining EU, while the common law countries had to produce serious changing in their domestic jurisprudence in order to fit the European Court 's requirements, especially in terms of providing evidences and enforcing the decisions. So, the fear of having to obey a 'foreign' legislation, protected by a neutral Court, leaves almost no room for the countries to complain or influence somehow, the decision-making process inside the Court. Since the values to support a Constitution or a set of rules are, usually, the most preeminent in a society, The European legal culture is broader and encompasses not only the common issues, but also certain elements from other legal systems, making the EU legislation to be both familiar and strange. While for the federalists, this kind of Court, even with broader and broader competences is the main tool of building a multilayered system, for the inter-governmentalists, the Court is a threaten and a permanent sign that the Union is moving in the opposite direction. Also, since the question of transparency of the decisions and the legal possibility to see the files in case of direct and individual interest had been answered in the sense of increasing the visibility of the decisions and the means of information, the Court became more friendly and acquired the legitimacy to be considered a basic institution of the (federal) Europe to be. Its permanent concern with the treaties as well as the state neutrality of the judges have conferred the Court a very good position and a high rate of support. Since it already works like a federal Court and no consistent challenge had been addressed to the Court, there are enough reasons to suppose that no major change will occur in the near or medium future. Therefore, the

Court may be considered a federal institution, acknowledging even a step further than the other institutions or in comparison to the theories of integration.

All the other major EU institutions have (e) merged in 1965, in application of the Treaty in Bruxelles, establishing a single 'parliament' and a single 'executive' for all the three Communities. As a consequence, the Councils of Ministers from the three Communities became the unique Council of Ministers; the General Assembly and the Parliamentary Assembly become the European Parliament while the three executives united in a single one, the European Commission. Later on, in 1974, the European Council came to complete the picture. In terms of political branches, the Council (s) and the Parliament are, now, the main legislative bodies, and the Commission is the EU's executive with a wide room for initiative. The difference between the two Councils is made by the competences allocated, but they share with the Parliament the power to make laws and other kind of mandatory norms for the Union. The Council especially is generating many studies and analyses, since it works like a 'superior chamber' of a legislative.[124] Its members represent the states and this is why, it is considered to act like the higher chamber of a traditional bicameral parliament. On the other hand, "with respect to bicameralism, there seems to be general agreement that it creates a system of checks and balances by giving each chamber the power to chancel the other's decisions."[125] In the EU case, the lower chamber – called the European Parliament – has no such power. It has almost no consistent competence in terms of legiferation where the Council cannot veto, while the Parliament, on its turn, can only modify or suggest changes in some issues. Now, once the Lisbon Treaty will enter into force, even the national parliaments will have a say – not quite as veto, but in terms of logrolling and changing so much that the original aim not to be touched any longer. Therefore, taking into consideration the competences and the co-decision procedure, we may consider the Council rather a tool of the inter-governmentalist trend than a sign of federalism. On this ground, the shift to federalism will require not only a political decision, but, on its traces, the change of the whole system of decision making, to turn these three institution into a real and effective Parliament with two chambers. So, on the grounds of such an orientation, there are to be delimitated clear powers for each chamber, the relation between them and, still, the procedure of representation in the upper chamber. Is

---

[124] See Arend Lijphart, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven and London, Yale University Press, 1999, p.79;

[125] George Tsebelis, *Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism*, in 'British Journal of Political Science', vol. 25, No.3, (Jul., 1995), p. 290;

there to remain an (exclusive) space for the member states or it will open to regions/ local authorities of some kind or other? Will the level of state be the lowest one in terms of authorities to influence the federal decisions? Will there be some particular rules to secure the voice of minorities in one of these chambers or, minorities will remain the exclusive task of the national or sub-national level, which do not always provide them choices. Moreover, being a legislative body, will have to take into consideration even the plurality of legal systems and cultures on the continent and decide for a certain ground of selection or of mixing (if possible?) them into a coherent and effective set of communitarian regulations.

I may say that, a reform of the legislative body (ies) in the EU will require a deeper analysis and strong political decisions to be made before the change. It is about the member states to decide to transfer more and more from their powers to these authorities, issue which is hard to predict or shape from a purely theoretical position. The change implies too many 'either-or' options, and, speaking about (already residual) sovereignty there is no possibility to predict or to calculate the exact variant or the timing of these choices. Each of these institutions may be studied independently or may help to suggest some modifications, but a three dimensions change would have been too much for our paper. Usually, the sovereignty contains a serious amount of subjectivity, which is unpredictable and may change according to the political environment on a given moment. This is why, the only 'approachable' institution remained the Commission and I will try to find out how much of its office can be described and analyzed. The questions supporting the following pages will be related to the initial, original task assigned to the Commission in the founding Treaties, the opportunity to determine a presidential or parliamentary system in the EU as well as its strong points in comparison to national executives or to other agencies working within the Union. Above all, the Commission has "the exclusive right to propose legislation (known as the right of initiative) in most policy areas".[126] It is this institution to decide the agenda of the whole Union in terms of policy making, further regulation or remedies. Therefore, if there is a political reform at stake, than most likely the Commission is the one to make the appropriate arrangements to prepare it or to build the framework for its implementation. This position makes the Commission even more important than it may seem at a first look. As a neutral instance serving primary the Union and only indirectly, the states, it has a strong hand to determine the tendency towards a more federalized structure or to keep things in

---

[126] John Van Oudenaren, 2005, p. 71;

their actual position. Its autonomy from the states' interests backed by the large access to information and expertise makes it a strategic player whose real powers are augmented by this position and supported even by the opponents of a federal design. It may be the case that the Commission will drive the whole Union's machinery to one point or another in the coming decade, exactly due to this special statute.

3.2. The European Commission now

More than half a century ago, the Treaty of Paris (1951) established in article 7 the fundamental institutions which were to manage the fulfillment of its provisions and thus, to protect the setting up of the first level of economic, trans-national cooperation in post-war Europe. These institutions were "The High Authority, assisted by a Consultative Committee, the Common Assembly, the Special Council of Ministers and the Court of Justice"[127] At that time being only a narrow defined cooperation between six neighboring countries, this Community offered the pattern for the other two that come into being seven years later. In the list of institutions expected to carry out its mission, the High Authority was occupying the first position. Namely, for an organization designed mostly to deal with a concrete economic task, the executive was considered to be the outstanding institution. In the consolidated Treaty of Rome[128], the same article 7 mentions the Parliament first, than a Council and a Commission. It was already a shift towards a more comprehensive cooperation and thus, the emphasis moved from the implementation body to the decision making ones. However, the existence of this kind of executive, grouping experts "chosen on the grounds of their general competence and whose independence is beyond any doubt"[129], stays for the supra-national intended character of this/ these Communities. Irrespective of the founding approach's goal, the supporting idea was that of achieving certain results without involving the states in the management of those programs. "It shall be the duty of the High Authority to ensure that the objectives set out in this Treaty are attained in accordance with the provisions thereof."[130] This is why the Commission has been called "the guardian of the treaties" and why it can control and, eventually, penalize the states. Its

---

[127] Treaty Establishing The European Coal and Steel Community, Paris, 18 April 1951;
[128] Treaty establishing the European Community, Rome, 25 March 1957, entered into force 01. January 1958; the text has been modified several times, trough the Community's Treaties and trough the Joining Treaties of successive waves of countries;
[129] ECSC Treaty, 1951, article 10,1;
[130] Ibidem, article 8;

members "are not supposed to take instructions from national governments or to represent the countries of which they are citizens. They are to take an impartial view"[131] on what is going on in the entire Union and to decide according only to the communitarian legislation. However, they are acting like "gate-keepers"[132] between the national governments and the Commission, providing both with the most accurate information about each other and being able to explain better the expectations and resources of each part. It was proved that they can not disregard their national affiliation but they can and do use their position to help each part to get closer to the requirements of the other.

In order to perform its task of treaties' guardian, the Commission has the right / task to warn the states ever since they fall apart the provisions of the Union's legislation, asking and expecting explanations or solutions from the named state, with regard to reviewing the case. Up to this competence, the Commission could have been either the executive of an organization, a cabinet or any kind of authority, mutual recognized. But since the fist charge is backed by the right to sanction the state even by suing to the European Court of Justice in case of violation of the Treaties, we come closer to the powers of a cabinet acting within some sort of political unit. The imperative character of the communitarian provisions leads to this right to apply sanctions and to enforce a certain expected state behavior.

The second main power of the Commission is that of *agenda-setting*. In this respect, very important is "its exclusive right of initiative in the law-making procedures. The Commission can decide, whether, when and on which legal basis, the Union should act."[133] The Commission can determine, through its legal initiative, both the material part of a rule and the assigned procedures aimed to implement the agreed rules. On this basis, it is a strategic player, able to place some issues in front or in the middle of the agenda, according to its own interests. It can perform this task in the same manner as a British prime minister, since it is has a monopoly position with regard to first hand information. Therefore, it is up to the Commission to propose a certain variant of a rule or other and even to provide those arguments that might better support that position. Since in the Directorates General as well as in the cabinets there is a high concentration of political and/or economic bias, the Commission is the place where all these interests come

---

[131] John Van Oudenaren, 2005, p. 72;
[132] Damian Chalmers, Christos Hadjiemmanuil, Giorgio Monti, Adam Tomkins, *European Union Law. Text and Materials,* Cambridge: Cambridge University Press, 2006, p. 88;
[133] Armin von Bogdandy and Jurgen Bast, (ed.)., *Principles of European Constitutional Law*, Oxford: Hart Publishing, 2006, p. 258;

together and have the chance to determine a certain decision at the Union's level. On one hand, this opportunity is a reason of satisfaction and support from the possible recipients of the expected regulations[134], but on the other side, it may be a source of un-efficiency. Since the Commission needs to moderate between too opposed positions, it may come out either with an unsatisfactory outcome, or with no result at all. "A system as heterogeneous and as much based on consensual procedures as the EU gets less effective the more political and open a discussion is."[135] The task of discovering the middle way may be as difficult as to postpone too much a decision or to produce a certain regulation that might be too large to produce its own effects. If not, it may need a certain rhetorical façade in order to emphasize on the technical grounds and hide somehow the political or economical direct interest. So, one way or other, consensualism means not only the certainty of a final agreement, but encompasses the sinuous path towards the compromise together with the entire plethora of incompleteness and half way satisfaction. So, despite of being a neutral body – in terms of non-subordination to the states – its decision making may be highly politicized by the everyday questions addressed and the – basically – narrow way outs. From the point of view of its bounded powers it is very much similar to the American president who, in domestic issues, has theoretically huge powers but they are limited by the Congress support and/ or by the interest groups' lobby. We may add here that this autonomy from the member states leaves the Commission in free field of the Union's market, to aggregate various trends under the umbrella of the Treaties and still, maintain a coherent policy making trend. It is, on one hand, the price from being free from any hierarchy, but in the same time, the assumed risk of being placed in the middle of the road.

If – in an institutional context - we can consider a symbolic balance, than the above mentioned difficult position of the Commission is compensated by its function to represent the whole Union. "The members of the Commission and above all the Commission president provide political leadership for the European integration process and are among the most visible symbols of the Union to the public. The Commission also represents the EU in international trade negotiations."[136] On one hand, the commissioners enjoy a enjoy a very interesting position: their power to decide or influence decisions increases their symbolic power which, will attract both

---

[134] "In areas where a unanimity vote by Member States is not required, the Commission can act as a broker between some actors and to outmanoeuvre others.", Damian Chalmers, 2006, p. 97;
[135] Idem, p. 261;
[136] John Van Oudenaren, 2005, pp. 72-73;

support and demands. In case of successful satisfying these demands, they will, again, increase the official's visibility. In the opposite case, s/ he risks to lose not only trust and support, but also to have her/ his own credibility decreased. The tools used, the speed of obtaining sound results as well as the results themselves, will challenge every day a commissioner' statute and will keep her/ him in a permanent alert mood.

From the perspective of the Commission as a group it (is to) represents the voice of the common interest of the European citizens as prescribed in the treaties and this position provides a new meaning for its neutrality: it is not dependent on any state, but it is fully accountable to the Union in terms of preserving its aims, interests and legitimacy. Although the implementation of the policies is a mixed administration, sharing the powers with the executives or agencies in the member states, it is this everyday activity that can and ought to offer arguments pro or against the need of EU, its efficiency or the lack of them. Somehow, since on one hand, the expertise and carrier of any commissioner is at stake in his/ her particular field, on a group level, the activity of the Commission is the one to support or deny the viability of the European Union. This is neither simple, nor avoidable. Do the member states need such a Union? To what extend? The answer lays in the Commission's hand and office, in terms of producing legislation, implementing rules and everyday checking the way they are applied.

"The Commission has direct legislative powers in only two limited fields. It can issue Directives to ensure that public undertakings comply with the rules contained in the Treaty and can issue Regulations determining the conditions under which Community nationals may reside in another Member State after having worked there. It has more significant powers in the field of delegated legislation."[137] While the Directives can be challenged at the European Court of Justice, the Regulations require a very delicate interpretation to be declared hidden Directives and to acquire similar statute. In the case of delegated legislation, the situation is even more complicated. There is a strict list of fields in which the Council can – under article 202EC – delegate legislative powers to the Commission, mainly with respect to the procedural rules or to apparently material issues which, in fact, represent only aspects of laws' implementation. So, usually, this delegation occurs in technical aspects. However, the question of accountability had been already raised, arguing for some sort of *eurocracy* or the *tyranny of Brussell's bureaucracy*, since the outcomes of these delegated powers are not always satisfying the member states. Here

---

[137] Damian Chalmers, 2006, pp. 93-94;

is another face of the – still – unsolved dilemma between the Union of states on one hand, and the desired, expected but incomplete regulated Union of people. The Commission may decide in a pure technocratic way, which will not meet the expectation of any state being part of a case/ dispute, without violating the Treaty or the exigencies of that particular field's efficiency. While being neutral, the Commission can afford to decide a-political, while the Council will definitely bring a strong political alternative. While the delegation takes place, it is more likely that the political issue will not prevail in the decision making. Depending on how we would answer the question on who is the real subject of the Union, we may get a more or less positive appreciation on the possibility to have delegated powers. On the other hand, "the blame for policy failures, as well as for uncomfortable but necessary decisions, can be shifted onto the supranational institutions, which often lack both the capacity and the interest to shift it back. In view of their preference for 'more Europe', and the absence of electoral pressure, the supranational institutions are ideal scapegoats for unpopular developments in the EU."[138] As it is expressed in the preamble of the Lisbon Treaty – but not only – it seems that the main subjects are (still) the states, but they can not or do not afford to determine a radical change in terms of the Commission's or Court of Justice's structure and accountability. Having to accept and comply to a binding rule, the states can only hope to influence from time to time or veto with the Council's hand, the decisions of the Commission which they do not fully agree with.

The implementation role is shared with the member states and often the Commission retains only the coordination part. Therefore, it does not have much discretion on this issue, while the states hope to 'adapt' the Communitarian rules to their domestic traditions and interests. In so far as they do it according to the EU legislation, things work out properly. But as soon as the Commission - itself or informed, accessed or even challenged by a (natural or moral) person – will find out that any violation of rules or their misinterpretation is in line, it is bounded to react in the preservation of legislation and sense of uniform application in the Union. It has the powers and the means to constrain the states to comply and, in the worse case, to bring an action for failure to act, in front of the European Court of Justice.

Having all these powers and correlations in mind, we may consider that the Commission enjoys many attributes of a federal executive and, still lacks some of them. The list of non-federal

---

[138] Jonas Tallberg, *Delegation to Supranational Institutions: Why, How and with What Consequences?* , in 'West European Politics', Vol. 25, No. 1 (January 2002), p. 27;

features is to be opened by the lack of political accountability, in terms of party politics. There is no European party/ coalition of parties to nominate or directly support the Commission. This is, of course, voted in the Parliament, but the party bias and support that characterizes any executive in a (national) state, is absent here. As I have already pointed out, this is both a good and a bad aspect. Since even the European parties are – still – loose entities, such a support would not have much importance. In the same time, this statute of the European parties is a very important evidence that there is no fully European party politics, but still, a (more or less externalized) national one. So, the lack of European parties' support for the Commission is only the effect of the low Europeanization of the party life.

Another un-federal issue is the role/ statute/ position of the Commission's president. "In the original Treaty of Rome, the president had no formal powers over his fellow commissioners. This changed in the 1990s, as the member states approved treaty amendments that made the head of the Commission more like a national chief executive, able to choose his "ministers" and direct their work."[139] From one Treaty to another, his position had been strengthened, starting with the obligation of being consulted, than obtaining a veto power against any nomination made by a state and also, a political guidance[140] of the commissioners. This is how, little by little the President can become the most visible figure and hence, the real symbol of the Union. However, the Lisbon Treaty provides a stable and permanent presidency of the Council that may somehow challenge the influence and the power of the Commission's president. This issue will be addressed in the following paragraph in terms of the dilemma: a presidential or a parliamentary EU? Since it may reveal to be just a reformulation – on a higher level – of the other, older problem: a Europe of states or of citizens, its solution may be, finally the answer to the EU's identity crises.

A third and very important – if not crucial – lack of Commission's federal powers is the competence in the matters of the second and third pillars, where the Union has few shared powers with the states, if any. The Lisbon Treaty lists security and justice among the shared competences, but it is not yet, enforced. On the other hand, the common defense can also acknowledge a shared character after this Treaty will enter into force, due to the provision of the *mutual defense clause*, which should be activated with a qualified majority vote. It also

---

[139] John Van Oudenaren, 2005, p. 77;
[140] The Treaty of Amsterdam, article 219, ex. Art. 163, amended: "the Commission shall work under the political guidance of its President";

introduces the 'solidarity clause' in case of an attack against one member state as well as the existence of the European Defense Agency, with a view to a future European army. Since the Treaty is not the main law, we have no possibility to check its' effects or to foresee the changes in terms of Commission's powers. Of course, European Union is not in the case of the American colonies at the end of the 18th century, when Hamilton argued for a federal army[141], but the commitment of its states and of the whole Union in peace keeping – both by force of model and by active involvement in peace-keeping operations – already requires a common structure. In the present day complex political and security environment, it is not enough to declare that 'Europe is a civilian power'! Conflicts on-going on its borders or – as I have already mentioned – its duties in peace-keeping operations, ask the EU politicians to wake up from their defensive dream and accept another transfer of sovereignty from the states to the Union's level.

However, there is a strong evidence of federalism in the so called 'mixed administration[142]', in terms of the shared powers to implement the Union's policies in the member states. Related to some issues, there is the Union – through the Commission - to establish the procedural rules while the states have to follow them (the *top-down proceedings*), in cases of eco-labels or subsidies; in other issues, there are the states retaining the initial decision right, while the Commission comes only after to confirm or harmonize (the *bottom-up proceedings*) in many agricultural related situations; and also *hybrid proceedings*, with elements belonging to each of the previous types. This is the case in most of the single market issues, in terms of labels and reciprocal recognition of products. We may say that the aspects related to and regulated by the economic market reflect and support a federal administration, while the political one – with its more subjective decisions – is still keeping things behind. Therefore, in terms of internal transaction costs, a federal variant has posed itself to be efficient, while the elements of political sovereignty are still constraining a full transfer of competences. These later ones – the so-called sovereign transactions – are very much dependent on elements of accountability, need of power, traditions and collective memories – which are harder to change and, therefore, raise

---

[141] "If there should not be a large army constantly at the disposal of the national government it would either not be able to employ force at all, or, when this could be done, it would amount to a war between parts of the Confederacy concerning the infractions of a league, in which the strongest combination would be most likely to prevail, whether it consisted of those who supported or those who resisted the general authority.", Alexander Hamilton, *Federalist No. 16,* December 4th, 1787;

[142] See Giancinto della Cananea, *Mixed Administration – The European Union's Mixed Administrative Proceedings,* Westlaw, Winter 2004, 68-WTR Law & Contemp. Probs. 197;

higher prices. Actually, for a given generation, the economic costs may be easily obvious, while the political ones need some longer time to be proved.

3.3. Questions on the Commission's future

According to the Lisbon Treaty, the European Council will have a permanent presidency, a person elected for two years and a half, by the European Council and expected to "ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the High Representative of the Union for Foreign Affairs and Security Policy"[143] The first question which arises is about the relation between this President and the Commission's one. Is it going to be a real cooperation, as provided in the Treaty? A conflict? Will it be a problem of personalities and, thus, of leadership' style? The treaty does not say much about this issue, although it might turn to be crucial for the future profile of the Union. Apparently in different terms, will it be the political factor to win (meaning that the member states will still keep the chains of a real federation to come) or the executive will acquire more and more power in order to strengthen the supra-national level? Are they prepared for a check and balance politics or the traditional European style will make one or other of these institutions to prevail? Which of these presidents will be the President?

3.3.1. A Presidential Union? In theory, it may be possible and, for one reason or another, there may be many supporters of such a variant. Looking back to the comparative chapter, we may find that (in real terms) three out of the four federations are presidential ones: United States, Germany and India. Is such a paradigm suited for Europe? Is anything to prevent it to become the dominant version?

From the very beginning we need to note that a presidential system means a strong executive in the person of or head of a president "with real decision making powers. Presidents in this type of system are not limited to purely ceremonial duties, and they do not share real executive power with a second executive, such as a prime minister."[144] But the idea of having one person endowed with so much power over all the European states is more than a crucial argument against such a project. Collective memories of any nation as well as the entire European history had been a prove of how a single person will sooner or later acquire all the powers (or influence

---

[143] Treaty of Lisbon, art. 9B;
[144] Sodaro, Michael J., Dean W. Collinwood, Bruce J. Dickson, Joseph L. Klesner, Timothy D. Sisk, *Comparative Politics. A Global Introduction*, New York: McGraw- Hill, (2001), 2004, p. 185;

them in such a way) that limiting power will remain just a dream before people will even remark the change.[145] If, still, the person will have the skills to keep governance within the democratic framework and make different parts agree more or less, his succession will most likely be a failure. It would be enough to remind here episodes starting from Charlemagne' sons and ending with the XXth century secession of Czechoslovakia to see that no personal skills, charisma, charm has been enough to keep Europeans together and willing to continue a common story. One may argue that all these cases have lacked the checks and balances issue, but in the same time, it is already well-known that the idols of power make any leader to establish the exact framework in which his personal program should get unlimited room. Moreover, in such systems, the president is directly elected by the people, gaining not only power, but also legitimacy and, on this ground, the right to disregard many objections coming from other institutions (perhaps indirectly elected), as they claim to act on behalf of the people. Since in the European Union, the president of the Council will never be elected by the people while the president of the Commission is elected by the Parliament – as the representative body – there will be a strong incentive for the later to consider himself such a strong president and attempt to become even stronger then the other one or, at the limits, to behave like the head of the Union. The fact that the Europeans are aware of such a risk is the large autonomy of the commissioners in their particular field, once they are appointed. While "in presidential systems the president appoints secretaries (sometimes called ministers) who are heads of his executive departments"[146], in the EU, the president of the Commission is still *the first among equals* and there are low chances for this to be changed. "He appoints his colleagues who together with him form the government"[147] and they work on the "*principle of collegiality*. The Commission is collectively responsible for all decisions taken and all Commission decisions should be taken collectively."[148]

The political neutrality is here at stake, to support the technocratic emphasize on the Commission's decisions in contrast to pure partidist ones. Sine they are not backed by any political party or coalition of parties, there is only the solidarity and reciprocal trust to hold commissioners together and give them force to select an option or other. Perhaps the strongest

---

[145] "Presidential constitutions also reflect profound suspicion of the personalization of power: memories and fears of kings and caudillos do not dissipate easily", Juan Linz, *The Perils of Presidentialism*, in 'Journal of Democracy", Winter 1990, volume 1, number 1, p. 54;
[146] Douglas V. Verrney, *Parliamentary Government and Presidential Government*, in Arend Lijphart, (ed.),
'Parliamentary versus Presidential Government', Oxford: Oxford University Press, 1992, p. 42;
[147] Ibidem;
[148] Damian Chalmers, 2006, p. 88;

difference between a presidential system and EU is the 'zero-sum elections' shaping the first one. "Presidentialism … operates according to the rule of "winner-take-all" – an arrangement that tends to make democratic politics a zero-sum game, with all the potential for conflict such games portend."[149] Such an election as a choice between two and only two alternatives can be satisfactory in a roughly homogeneous society in which ethnic, religious or historical issues have been put aside (conscious, declarative or, as a matter of time) in favor of the socio-economic issues, of the happiness and freedom to interpret welfare with no risk to misunderstand or ignore radical factors, in favor of a medium path around which it affords to swing for the intervals of a mandate or two. On one hand, during this period, the opposition is clearly an opposition and has little chances to influence things in one way or other; but the certainty that rotation is possible and no part is going to keep power an undetermined time, gives both some time to rethink one's program and to search for better solutions. It is only the president who may fall in the pitfall of considering its power to be absolute and immutable and, thus, to abuse of its prerogatives. Since this model had been mostly developed in the United Kingdom and exported in its former colonies, we may add that the pattern fits better in unitary and (more or less) centralized governments[150] If we, now, go back to the three federations evoked above, we may say that each of them has common features with this theoretical pattern but also a basic one that makes the difference and, on this ground, a particular federation may acknowledge this kind of governance.

The clearest case is that of the United States, where from the very beginning there was declared to be a single people, placing the cleavages in the charge of the local governments. Moreover, its enlargement brought different states inside an already established system that managed to control and impose a certain political culture. In addition, since the American colonies declared that there will be no kingdom, no nobility in their territories, the bi-cephalic leadership in the UK is solved by the fact that the prime minister is also the head of state. As a consequence, he enjoys both the effective powers to decide and implement and, respectively, the ceremonial side, which in 'pre-parliamentary monarchies' (Verney) belonged to the monarch. This kind of sovereign has lost the sacred side of his office, but acquired the one of popular grounded legitimacy which makes him powerful and determined. Elements like size and population maintain the need of a federation, as well as the already established tradition of

---

[149] Juan Linz, 1990, p. 56;
[150] See Arend Lijphart, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, 1999, New Haven and London: Yale University Press, p. 47;

autonomy and self-governance in a long series of fields. As a consequence, federation is the result of bottom-up developments, while the presidential system is the up-dated variant of the inherited Westminster model.

The Indian case is even simpler, but again, issues like size, tradition and (here) diversity are the pillars of the federal system. While constitutionally, India is a parliamentary democracy, the prime ministers have been the strongest leaders during the last half of century. If we add the unique citizenship and the late emergence of regional or local forms of government, we can support the description given to this federal system as 'coalition and administration'[151] to be more suited than a real decentralized and delimited structure of powers which would characterize a classical federation. Besides, its recent evolution shifts from this pattern to the more appropriate one, that of consensualist democracy, to give voice and power to different groups and regions who demand it and started to ask for alternative visions.

With Germany, as I have showed in its specific paragraph, things are simple and complex in the same time. According to its Constitution, Germany is a parliamentary democracy. A tradition of self-administration and of local power can not be undertaken by any contemporary demands or trends. The unitary linguistic map which supports a roughly homogenous political culture and set of social values leaves little room for vernacular disputes. However, the strong leadership provided by the Chancellors, backed by the fight for the federal powers which is mostly given between two large coalitions enables us to consider the federal level as a variant of presidential system, closer to the British bi-cephalic structure, but still leaving very much discretion on the Chancellor' side. Of course, the general system can not be but a parliamentary one, since the trend to centralize which is specific to the presidential system, will be completely unacceptable for the *Lander* as well as for the citizens, themselves.

The European Union can only claim a need of (national, if not also regional and local) self-governance but has no chances to attain the homogeneity required by such a two-party competition. With its large diversity and still tremendous memories, it will have to choose the other path and leave the Commission apart from the chance to acquire such a large power. Its president will continue to be the leader of an executive with autonomous ministers. Even in the case of large coalitions in the European Parliament (which are hard to predict for the coming

---

[151] S.D. Muni, *Ethnic conflict, federalism and democracy in India*, in Kumar Rupesinghe and Valery A. Tishkov, (eds.), 'Ethnicity and power in the contemporary world', Tokyo: United Nations University Press, 1996, p. 189;

decades), the Commission will not afford to be backed by a majoritarian coalition and to aim to such a decisive position. Perhaps it would be even dangerous for the Commission itself to betray the agreement of political neutrality and replace merits with seniority and party support for its members.

3.3.2. A Parliamentary System?
"A parliamentary regime in the strict sense is one in which the only democratically legitimate institution is parliament; in such a regime, the government's authority is completely dependent upon parliamentary confidence."[152] So, the emphasize lays on the broadest representative body, with the largest chances for all kind of groups to have a voice and influence the final decision. The parliament is elected directly by the people, on a proportionate basis and is considered to be the source of legitimacy for all the other powers elected or nominated by the legislative. Instead of trusting one single person and endowing him with too much power, these systems prove preference for a large group of representatives expected to synthesize the will of the whole people. The most important consequence is that this parliament elects or approves the government (in the narrow sense). This one will consist of a prime minister and a number of ministers. "The head of government is the chief executive decision maker in the country."[153] But he is responsible in the front of parliament for the whole management of the executive and may also be the subject of a vote of (non) confidence. As a consequence, his discretion depends very much on the powers given or delegated by the parliament. In political terms, his freedom to act is framed by the party/ coalition that nominated him and supports his proposals and activity in the legislative body. In this respect, the head of government is the person to coordinate the policy for as long as the political support is provided to him and his team. He may be wrong and, thus, changed, without generating any kind of crises or reformulation of the program that had brought a certain political group into power. Therefore, it had been considered that "there is no separation of powers between the legislative and executive branches as in the United States; rather there is a fusion of powers,[154] since the later is accountable to the first one. While the parliament can change a government by a vote of non confidence (although trough more and more complicated procedures, like the *constructive vote of non confidence* in the German case), the head of government has little room

---

[152] Juan Linz, 1990, p. 52;
[153] Sodaro, Michael J., Dean W. Collinwood, Bruce J. Dickson, Joseph L. Klesner, Timothy D. Sisk, *Comparative Politics. A Global Introduction*, New York: McGraw- Hill, (2001), 2004, p.187;
[154] Ibidem;

for maneuver and can think about dissolving the Parliament only with the help of President and, again, following very complicate procedures. Since the President himself may be elected by the Parliament, it will be required a real violation of the rules or of the political agreement to ground such a decision, which, on the other hand is of great risk for all the political actors on that scene. The soundest case was, perhaps, the decision of Chancellor Schroder to call for snap elections which, instead of providing him a stronger support, have lead to the seldom case of Grand Coalition in Germany and to the lost of the leading position for his party. In terms of European Union, the resignations of Santer Commission (1999) has prevented the first major vote of non confidence from the European Parliament against the Communitarian executive and also lead to a structural reform of the administrative system. Its very large discretion had been limited by strict rules of accountability, delegation of powers and control exercise, doubled by a reformulation of the requirements related to the carrier structure.[155] We may say that the previous office of the Commission more like an autonomous agency than as an executive accountable to other branches of the European Union was not only a case of mismanagement, to be imputed to a certain leader or commissioner, but a clear sign that such a body is part of a hierarchy that establishes its degree of freedom and is entitled to ask for certain results in the exercise of governance. In terms of the above mentioned reform, the carrier of every civil servant has to follow very clearly defined conditions, and will be governed by the *Code of Good Administrative Behavior* (2000, modified in 2004). The contracts and the necessary expertise should be realized according to very precise rules determining who will be in charge with what. In the same time, new executive agencies will be possible in order to free the Commission from some routine activities and enable it to preserve and perform a coordination activity. And, perhaps, the most rewarding change for the European citizens is the requirement of transparency in terms of documents, money expenditure and decision making process. It supposes the possibility for individuals or legal persons to have access to almost all the document of the executive and ensures a permanent check (both from the Parliament and from the civil society) on the actions and options of the Commission. We may say that from a very complex and foggy body, the Commission turned (and is moving towards) a more opened and cooperative executive, expected to coordinate and monitor activities in the system, instead of doing alone on behalf of the whole Community.

---

[155] See Paul Craig, *The Constitutionalisation of Community Administration*, European Law Review, 2003, pp. 840-864;

"Many parliamentary regimes also have a *ceremonial head of state:* a constitutional monarch or president who possesses few, if any, real decision-making powers and whose main job is to symbolize the country's unity or the continuity of its history."[156] Will the already mentioned president of the Council be such a passive head of EU? Will the states accept such a president? In what terms can be described the office of an elected person who will have to govern over some monarchs, still retaining the sacred consistency of their position? And, why not ask, will the states – who are, still, the main "actors" or the Union (in contrast to citizens or people), will they accept to support just a ceremonial person while the effective leadership to be provided by the Commission? Perhaps here is the optimum moment for Switzerland to offer its main lesson: if the head of state will not be only a ceremonial person, than the whole consensual system and Union's unity will be in danger. There is no way out but to accept, like the Cantons did, that the representative of states may be only a symbol and not more. In so far as the Council will provide him with real powers, the conflict with the Commission will be not only obvious, but also granted with effects hard to be controlled. Hence, the European states will have to accept they will be the Cantons of such a (con) federation, having and preserving power only in so far as they will offer the power; they will control and challenge it only as long as they will not own it. The states will have to shift from the pleasure of power to the wisdom of power. In that respect, a consociational arrangement at the European level will be not only possible, but also largely accepted as comprehensive enough for all the trends and projects supposed to reflect the diversity of the Union. And will finally, create the framework to reconsider the Commission as a necessary balance instead of a tyrannical just bureaucratic institution.

3.3.3. Conclusions

"A careful comparison of parliamentarism as such with presidentialism as such leads to the conclusion that, on balance, the former is more conducive to stable democracy than the latter. This conclusion applies especially to nations with deep political cleavages and numerous political parties."[157] In terms of the European Union, where diversity is not only the definition but also the crucial challenge for any project, any kind of political structure that will not give a chance to minorities to have a hand – at least – in the fields of direct and individual concern, will be at risk. Political figures, on the other hand, are desired and

---

[156] Sodaro, Michael J., 2004, p. 187;
[157] Juan Linz, 1990, p. 52;

controversial. Any of them might very well represent a certain perspective and, thus, a certain target section of the society, with few if any hope to be largely adopted and legitimized by the other (s). In this respect, the Commission as a neutral body may be (come) a very strong pillar of the Union, to counterpart, together with the Court of Justice, the centrifugal movements.

Another problem comes from the fact that, in a parliamentary system – as the only one that proved to be consistent with the Union's profile – the executive is bounded from two parts: bottom-up and top-down. In the first case, there are the shared competencies with member states, especially in terms of implementing policies, which can place the Commission in a ridiculous position – as it happened with the funds offered to the states but whose expenditure had not been controlled. The sub-federal levels: states, regions and local administrations are already competing for the structural funds with the large possibility to attract most of the visibility on themselves, as the real implementing instances of the public policies. As a consequence, the Commission may be the one to administrate the money and the federal policies but the rewards to be directed to the local or national administrations. What kind of relationship should it be between the Commission and these executives? Is the Commission in the position to build a clear hierarchy according to the pattern of national decentralized or devoluted structures? On the other hand, are the national agencies in search for a competitional relation with the one who provides them money and helps them to promote certain policies?

The top-down "reading" regards the relationship between the Council and the Commission. The problem is not only a political one, but regards the competition with the comitology committee that may create parallel options for certain fields, and may offer them more visibility. But "'political markets are far more prone to inefficiency' (North, 1990:362) there being a 'tendency of politics to produce inefficient property rights.'(North, 1990:365)"[158] As a consequence, the transaction costs may be too high, but still compensated by the political support that may add symbolic value and desirableness.

Now, the main question facing the European Union's administration: is it in the position to support so many competing and not necessarily agencies to provide public goods, especially since the citizens do not seem to be very satisfied with the supply? Is there a way out? If the Commission will be aware of its extraordinary role in this moment, it may impose some efficient

---

[158] Douglass North, 'A Transaction Cost Theory of Politics', 1990, quoted in Oliver E. Williamson, *Public and Private Bureaucracies: A Transaction Cost Economic Perspective*, 'Journal of Law, Economics and Organization', vol. 15, No. 1, 1999, p. 309;

criteria to smooth its way towards a position of real mediation and control of the whole administrative branch. While a hierarchical structure is hard to be accepted by the national agencies out of some particular fields and on limited periods and is, out of any discussion in relation to the comitology committee, the competition with any of these is both unbalanced and asymmetrical. Political power to influence bargaining will succeed against complete information and expertise only with unfair means, turning all the structure into a de-legitimized one and weakening the entire Union. Therefore, symbolic costs will have to be compared and balanced with symbolic gains and sovereign transactions should get proper criteria of evaluation in order to provide the optimum constellation of institutions. The transaction cost economics "views governance as the means by which *order* is accomplished in a relation in which potential *conflict* threatens to undo or upset opportunities to realize *mutual* gains."[159]

The Indian federation has already learnt how to minimalize the influence of the governors and to shift towards a shared powers structure in the public administration. The German lesson can show the Commission how to delegate and what kind of powers, while backing the transfer of powers with clear regulations and enforcing instruments. European Union's diversity seeking self-governance can be compared with the *Landern* tradition to exercise the administration of public goods by their own, with very little if any overlapping in duties. Therefore, the Commission will have to re-evaluate its workload and position in the Union' structure and decide what part it would like to play. It may learn from the Swiss model how to leave breathing space for all the regional/ Cantonal administration, preserving for it only the supervising and coordination role. It will never be possible to follow that pattern, but perhaps the Commission will define its path between the detailed defined German one and this prone *laisser faire* Swiss variant. If it is to continue accomplishing its original role, that of a guardian of Treaties' implementation, than the efficiency should prevail in the balance with immediate satisfaction and gain of people' support. Therefore, a clearer delimitation of fields and possibilities will have to be the starting point. Some domains are and should remain the monopoly of the Commission or of the other actors, others are clearly subject of competition. But all of them can be evaluated in terms of costs. How much can the Commission afford to lose out of its symbolic position in order to favor or accept unfair practices? How much will the people be willing to pay for all the political and quasi-political reluctances? In the final analysis, the degree of discretion of each of

---

[159] Oliver E. Williamson, 1999, p. 312;

these parts is and will be responsible not only for their welcome and sustainability, but for the success of the whole federal project in Europe. Excepting Switzerland – a small country with a strong commitment to compromise and pacify – every federation has a strong executive to keep the rhythm and the correct direction of the entire structure. The European Commission may be a real partner of the Parliament, anticipating and providing arguments for proper legislation, innovating and inventing the Union. So, we should have a parliamentary system, with an executive accountable to it and representing the dynamic force of the Union. A parliament is, more or less in contact with people, but the executive may have a general vision, understanding, reading that may allow it to prevent errors and prepare the road for permanent improvements. The Commission should make use of its most important power: that of information and push things towards the coherence and consistency that everyone expects. The competition with the states and with the Council's committee will have to be decided following the other federation's examples: namely the expertise should defeat the political arrangement by means of costs and effects. Neither the two centuries attempts of the American Congress nor the Indian Constitution giving so many powers to the governors manages to succeed against the flexibility and adaptability of the autonomous agencies/ national and local executives in implementing the proper policies or in determining the legislatives to provide appropriate legislation. The Commission should consider the national and local administrations as partners in order to provide a common network of information and know-how, the only tool to defend the challenges of the political branch. After all, the concrete success proved to be the strongest argument against the stubbornness and limitations of the pure political actors as well as the key to unlock bounded fields that lay behind a political decision. The lack of party support for the Commission is replaced by the people' support – direct or indirect, through their representatives in the European Parliament - as long as the every day office of the Commission proves to be the competent engine of the Union's machinery. This is what the Treaties assigned to the executive: the task to prepare the Union for its federal profile and to hold the dream alive.

Final Conclusions

The European Union is a dream as much as it is a unified market, a legal system –to-be or a lost chance. With diversity as its main attribute, even the task of defining a common path with a single outcome seems to be impossible and undesirable. The more proposals are on the table, the more solutions and means to meet them will be formulated and supported. The game is open but also the room for disappointments or hopes.

My commitment is for a federal structure. It can provide the framework for the Europeans to discover – perhaps, for the first time in terms of majority – the common issues binding them together in a common destiny and a harmonized voice on the world scene. There may be a plurality of official languages used in its institutions as well as a plurality of interests competing for the larger share of importance and concern. But the Europeans should stop visualizing the global map with them placed always in the center! They should realize that their neighbors are also multilingual and numerous, and that there is no given hierarchy between these large groups of peoples, between regions or cultures. There is an open competition in which they will have to be aware of their possibilities and limits they will have to produce everyday evidences for their claims as well as new aspects to surprise their competitors.

Charisma and mass support are not enough. Professionalism and technology have already shaped our way of thinking and will be the secret weapon of those who will win – for a second or for good. Therefore, institutions and legal provisions can not be avoided, but they should be the strongest pillars of the Europe we may want to build. In this respect, this paper was an attempt to prove that this part of world should be a cooperative federation with a parliamentary system, expected to provide the chance for every group to have a say and also means to fulfill its dreams, in order to feel secure and decide to support the Union. In such a case, the executive has to be a real force to moderate but also to push things ahead, to balance the traditional incentives and the new vanities, to be rigid like a hierarchy but also opened and flexible like a market. To have as many faces as the challenges that will question its position, neutral and fully involved. To be like a rainbow: rich, unique and thus, real European.

Bibliography:

- Briand, Aristide, *Speech*, 07.09.1929;
- Churchill, Winston, *Speech to the academic youth in Zurich,* 19.09.1946;
- Coudenhove-Kalergi, Richard, *Pan Europa,*(1923:Viena), 1997: Tg. Mures, Pro-Europa;
- Mazzini, Giovanni**,** *Speech*, 1848, quoted in Delureanu, Stefan, *Geneza Europei comunitare* (The Emergence of the European Union), 1999, Bucharest: Paideia;
- Spinelli, Altiero and Ernesto Rossi, *The Ventotene Manifesto*, 1941;

Chapter 1: The European Union and the federal project

1.1. Introduction:

- Xxx, *Message to the Europeans,* adopted in Hague, 7-11 May, 1948, The Congress of Europe, written and read by Denis de Rougemont;
- Adenauer, Konrad, *Speech*, 12th July, 1952, from www.spartacus.schoolnet.co.uk/2WWeuropeunity.htm, accessed 4/20/2008;
- Coudenhove-Kalergi, Richard, *Pan Europa,*(1923:Viena), 1997: Tg. Mures, Pro-Europa;
- Gasset, Jose Ortega y, *Europe and the idea of nation*, (Europa Y la Idea de Nacion, 1966, Madrid: Revista de Occidente), 2002, Bucharest: Humanitas,
- Gaulle, Charles de, *Speech*, 4th January, 1963, from www.spartacus.schoolnet.co.uk/2WWeuropeunity.htm, accessed 4/20/2008;
- Keyserling, Herman, *The Spectral Analysis of Europe*, 1993, Iasi: The European Institute;

1.2. Federalism or Intergovernmentalism ?

- Bauman, Zygmunt, *Globalization and Its Social Effects*, Polity Press/ Bucharest (missing year);
- Coudenhove-Kalergi, Richard, *Pan Europa,*(1923:Viena), 1997: Tg. Mures, Pro-Europa;
- Delureanu, Stefan, *Geneza Europei comunitare* (The Emergence of the Communitarian Europe), 1999, Bucharest: Paideia;
- Garrett, Geoffrey and George Tsebelis, *An Institutional Critique of Intergovernmentalism*, International organization, vol. 50, No. 2, (Spring, 1996), pp. 269-299;
- Monnet, Jean, *Memoirs*, New York: Doubleday & Company, Inc, 1978,;
- Moravcsik, Andrew, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, 1993, Journal of Common Market Studies, Volume 31, no. 4;
- Morin, Edgar, *Penser l'Europe,* (1987, Gallimard), 2002, Bucharest: Trei;
- Rosamond, Ben, *Theories of European Integration*, 2000, New York: St Martin's Press;
- Thatcher, Margaret, *Britain and Europe*, speech delivered in Bruges on 20th September 1988;

1.3. Federalism in Itself

➢ Altermatt, Urs, , *Das Fanal von Sarajevo. Ethnonationalismus in Europa*, Zurich: Verlag Neue Zurcher Zeitung/ Iasi: Polirom, 1996/ 2000;

➢ Burgess, Michael. *Federalism and European Union, Political Ideas, Influences and Strategies in the European Community, 1972-1987,* 1989, London and New York: Routledge;

➢ Elazar, Daniel, *Federal Systems of the World: A Handbook of federal, confederal and autonomy arrangements*, Longman Group, 1991;

➢ Greer, Scott L., *Territory, Democracy and Justice, Regionalism and Federalism in Western Democracies*, Palgrave, 2006,;

➢ Heraud, Guy, *Federalism*, Presses d'Europe/ Tg. Mures: Altera no. 6, 1995/1997;

➢ Hueglin, Thomas O. and Alan Fenna, *Comparative Federalism. A Systematic Inquiry*, Broadview Press, 2006,;

➢ Kant, Immanuel, *Perpetual Peace,* (1795), in 'Moral-Political Essays',Bucharest: Editura Stiintifica, 1991;

➢ Watts, Ronald, *Comparing Federal Systems*, Kingston, Ont. : Published for the School of Policy Studies, Queen's University by McGill-Queen's University Press, 1999;

1.4. Does EU need to be a federation?

➢ Churchill, Winston, *Speech to the academic youth* in Zurich, 19.09.1946;

➢ Kymlicka, Will, *Politics in the Vernacular. Nationalism, Multiculturalism and* Citizenship, Oxford University Press/ Chisinau:Arc, 2001/2005;

➢ Mazzini, Giovanni, (1829), *The Saint Alliance of the Peoples*, quoted in Stefan Delureanu, *The Genesis of the Communitarian Europe*, 1999, Bucharest: Paideia;

➢ Philippart, Eric and Monika Sie Dhian Ho, *Flexibility and Models of Governance for the EU*, in Grainne de Burca and Joanne Scott, 'Constitutional Change in the EU. From Uniformity to Flexibility?', Oxford – Portland Oregon: Hart Publishing, 2000,

1.5. The European Union now

➢ Gasset, Jose Ortega y, *Europe and the idea of nation*, (Europa Y la Idea de Nacion, 1966, Madrid: Revista de Occidente), 2002, Bucharest: Humanitas;

Chapter 2: Cleavages and Powers in Some Federal Systems

2.1. India:

➢ Xxx, The Indian Constitution, (Nov., 26th , 1949), entered into force: Jan., 26th , 1950;

➢ Kesselman, Mark, Joel Krieger, William A. Joseph, *Introduction to Comparative Politics*, Boston and New York, : Houghton Mifflin Company, 2004;

➢ Lijphart, Arend, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, 1999, New Haven and London: Yale University Press;

- Muni, S.D., *Ethnic conflict, federalism and democracy in India,* in Kumar Rupesinghe, and Valery A. Tishkov, *Ethnicity and power in the contemporary world*, Tokyo: The United Nations University Press, 1996;
- Pelinka, Anton *Democracy Indian Style. Subhas Chandra Bose and the Creation of India's Political Culture*, New Brunswick and London: Transaction Publishers, 2003;
- Watts, Ronald L., *Comparing Federal Systems*, Kingston, Ont: Published for the School of Policy Studies, Queen's University by McGill – Queen's University Press, 1999, 2nd edition;

2.2. Switzerland:

- Xxx, Switzerland Constitution, (April, 18th, 1999), entered into force: Jan, 1st, 2000;
- Amoretti, Ugo M. and Nancy Bermeo, (eds.), *Federalism and Territorial Cleavages*, Baltimore and London: The Johns Hopkins University Press, 2004;
- Fleiner, Thomas, *Switzerland: Constitution of the Federal State and the Cantons*, excerpt from Lidija R. Basta Fleiner and Thomas Fleiner, (eds.), 'Federalism and Multiethnic States: The Case of Switzerland', reproduced in Norman Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003, pp. 369-372;
- Fleiner, Thomas, Lidija Basta Fleiner, *Constitutional Democracy in a Multicultural and Globalised World*, editorial printout, 2006, accessed April, 20th, 2008, http://www.thomasfleiner.ch/index.php?page=281&lang=0,
- Fleiner, Thomas, *Federalism: Basic Structure and Value of Switzerland. Recent Developments In Swiss Federalism*, accessed April, 20th, 2008, at: http://www.thomasfleiner.ch/index.php?page=281&lang=0,
- Steiner, Jurg, *Consociational Theory and Switzerland _ Revisited,* in Jurg Steiner and Thomas Ertman, (eds.), 'Consociationalism and Corporatism in Western Europe. Still the Politics of Accommodation?', Amsterdam: Uitgeverij Boom, 2000;

2.3. The United States of America

- Xxx, The Constitution of the United States of America, 1787;
- Dorsen, Norman, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn.: West Group, 2003;
- Edles, Gary, *Developing a European Administrative Law Tradition: The Model of the US Administrative Procedure Act*, in 'European Public Law, Vol. 6, Issue 4, December 2000;
- Kesselman, Mark, Joel Krieger, William A. Joseph, *Introduction to Comparative Politics*, Boston and New York, : Houghton Mifflin Company, 2004;
- Moravcsik, Andrew, *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht,* Ithaca, New York: Cornell University Press, 1998;
- Rosenfeld, Michel, *Pragmatic Federalism*, in 'The Failures of Federalism in The United States', excerpt included in Norman, Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003;

2.4. Germany

- Xxx, Basic Law for the Federal Republic of Germany, promulgated by the Parliamentary Council on 23 May 1949, as Amended by the Unification Treaty of 31st August 1990 and Federal Statute of 23rd September 1990;
- Halberstam, Daniel and Roderick M. Hills, Jr., *State Autonomy in Germany and the United States*, excerpt in Norman Dorsen, Michel Rosenfeld, András Sajó, Susanne Baer, *Comparative Constitutionalism. Cases and Material*, St. Paul, Minn. : West Group, 2003;
- Helms, Ludger, *The Presidentialisation of Political Leadership: British Notions and German Observations*, The Political Quarterly Publishing, 2005;
- Kesselman, Mark, Joel Krieger and William Joseph, *Introduction to Comparative Politics. Political Challenges and Changing Agendas*, Boston and New York: Houghton Mifflin Company, 4th edition, 2007;
- Mayntz, Renate, *Executive Leadership in Germany: Dispersion of Power or "Kanzlerdemokratie"?*, in Richard Rose and Ezra N. Suleiman, *Presidents and Prime Ministers*, Washington DC, American Enterprise Institute for Public Policy Research, 1980;

2.5 Does Europe have something to learn from these systems?

- Xxx, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13th December 2007;
- Altermatt, Urs, *Das Fanal von Sarajevo. Ethnonationalismus in Europa* (The Provisions from Sarajevo. The Etnonationalism in Europe, Zürich: Verlag Neue Zürcher Zeitung, 1996), Iasi: Polirom, 2000;
- Gellner, Ernest, *Conditiile libertatii. Societatea civila si rivalii ei* (The Conditiions of Liberty. Civil Society and Its Rivals, London: Penguin Books, 1996), Iasi: Polirom, 1998;
- Lijphart, Arend, *Democracy in Plural Societies,* New Haven: Yale University Press, 1977;
- Lijphart, Arend, *Patterns of Democracy*. *Government Forms and Performance in Thirty-Six Countries*, New Haven and London, Yale University Press, 1999,
- Schnapper, Dominique, *La communaute des citoyens. Sur l'idee moderne de nation* (The Community of Citizens. On the Modern Idea of Nationhood, Paris: Gallimard, 1994), Pitesti: Paralela 45: 2004,

Chapter 3: The EU's Institutions: The Commission

3.1. The European Union's Institutions

- Lijphart, Arend, *Patterns of Democracy*. *Government Forms and Performance in Thirty-Six Countries*, New Haven and London, Yale University Press, 1999;
- Oudenaren, John Van, *Uniting Europe. An Introduction to the European Union*, 2nd edition, Lanham, Boulder: Rowman and Littlefield Publishers, Inc, 2005;
- Manolache, Octavian, *Drept comunitar* (Communitarian Law), Bucharest: Allbeck, 2001;
- Tsebelis, George, *Decision Making in Political Systems: Veto Players in Presidentialism, Parliamentarism, Multicameralism and Multipartyism*, in 'British Journal of Political Science', vol. 25, No.3, (Jul., 1995);

3.2. The European Commission now

- Xxx, Treaty Establishing The European Coal and Steel Community, Paris, 18th April 1951;
- Xxx, Treaty establishing the European Community, Rome, 25th March 1957, entered into force 01. January 1958;
- Xxx, Treaty of Amsterdam, amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts, 2nd October 1997;
- Xxx, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13th December 2007;
- Bogdandy Armin von, Jurgen Bast, (ed.)., *Principles of European Constitutional Law*, Oxford: Hart Publishing, 2006;
- Cananea, Giancinto della, *Mixed Administration – The European Union's Mixed Administrative Proceedings,* Westlaw, Winter 2004, 68-WTR Law & Contemp. Probs. 197;
- Chalmers, Damian, Christos Hadjiemmanuil, Giorgio Monti, Adam Tomkins, *European Union Law. Text and Materials,* Cambridge: Cambridge University Press, 2006,
- Hamilton, Alexander, *Federalist No. 16,* December 4th, 1787;
- Oudenaren, John Van, *Uniting Europe. An Introduction to the European Union*, 2nd edition, Lanham, Boulder: Rowman and Littlefield Publishers, Inc, 2005;
- Tallberg, Jonas, *Delegation to Supranational Institutions: Why, How and with What Consequences?* , 'West European Politics', Vol. 25, No. 1 (January 2002);

3.3. Questions on the Commission's future

- Xxx, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13th December 2007;
- Chalmers, Damian, Christos Hadjiemmanuil, Giorgio Monti, Adam Tomkins, *European Union Law. Text and Materials,* Cambridge: Cambridge University Press, 2006;
- Craig, Paul, *The Constitutionalisation of Community Administration*, European Law Review, 2003;
- Linz, Juan, *The Perils of Presidentialism*, in 'Journal of Democracy", Winter 1990, vol.1(1);
- Lijphart, Arend, *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, 1999, New Haven and London: Yale University Press;
- S.D. Muni, *Ethnic conflict, federalism and democracy in India*, in Kumar Rupesinghe and Valery A. Tishkov, (eds.), 'Ethnicity and power in the contemporary world', Tokyo: United Nations University Press, 1996;
- North, Douglass, 'A Transaction Cost Theory of Politics', 1990, quoted in Oliver E. Williamson, *Public and Private Bureaucracies: A Transaction Cost Economic Perspective*, 'Journal of Law, Economics and Organization', vol. 15, No. 1, 1999;
- Sodaro, Michael J., Dean W. Collinwood, Bruce J. Dickson, Joseph L. Klesner, Timothy D. Sisk, *Comparative Politics. A Global Introduction*, New York: McGraw- Hill, (2001), 2004;
- Verrney, Douglas V., *Parliamentary Government and Presidential Government*, in Arend Lijphart, (ed.), 'Parliamentary versus Presidential Government', Oxford: Oxford University Press, 1992;
- Williamson, Oliver E., *Public and Private Bureaucracies: A Transaction Cost Economic Perspective*, 'Journal of Law, Economics and Organization', vol. 15, No. 1, 1999;