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What Makes Europe strong: Treaties or a Federal Constitution?

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European integration is based on a treaty-based model of cooperation between sovereign states. For many decades, this model has promoted peace, economic development and institutional cooperation. At the same time, however, it has left one fundamental constitutional question unanswered: can a federal political order emerge from a system based exclusively on treaties between states? This essay argues that this question must be answered in the negative. A federation is not merely a more intensive form of international cooperation, but a specific constitutional form of state in which powers, responsibilities and democratic legitimacy are directly embedded in a fundamental legal order. The European Union, by contrast, has based its development on successive treaties, thereby remaining a hybrid political construct: stronger than an international organisation, but without the constitutional foundation of a federal state. Drawing on historical, constitutional-law and political-philosophical analyses, the essay examines why earlier attempts at European federalisation have stalled and why the constitutional question is once again becoming central. Particular attention is paid to the European Convention of 2002–2003, the Treaty establishing a Constitution for Europe of 2004, and the subsequent Treaty of Lisbon of 2007/2009. The essay also considers citizens' initiatives aimed at the federalisation of the European Union. It further discusses Polybius's theory of the evolutionary cycle of states and the federal thought of Johannes Althusius as an early example of a political...

Index Terms: Constitutionalism • democratic legitimacy • European Integration • European Union • federal constitution • Federalism • Johannes Althusius • Polybius • shared sovereignty • state formation

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PERSPECTIVE

What Makes Europe strong: Treaties or a Federal Constitution?

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Abstract

European integration is based on a treaty-based model of cooperation between sovereign states. For many decades, this model has promoted peace, economic development and institutional cooperation. At the same time, however, it has left one fundamental constitutional question unanswered: can a federal political order emerge from a system based exclusively on treaties between states? This essay argues that this question must be answered in the negative. A federation is not merely a more intensive form of international cooperation, but a specific constitutional form of state in which powers, responsibilities and democratic legitimacy are directly embedded in a fundamental legal order. The European Union, by contrast, has based its development on successive treaties, thereby remaining a hybrid political construct: stronger than an international organisation, but without the constitutional foundation of a federal state. Drawing on historical, constitutional-law and political-philosophical analyses, the essay examines why earlier attempts at European federalisation have stalled and why the constitutional question is once again becoming central. Particular attention is paid to the European Convention of 2002–2003, the Treaty establishing a Constitution for Europe of 2004, and the subsequent Treaty of Lisbon of 2007/2009. The essay also considers citizens' initiatives aimed at the federalisation of the European Union. It further discusses Polybius's theory of the evolutionary cycle of states and the federal thought of Johannes Althusius as an early example of a political theory in which power is not organised exclusively from the top down but arises from the cooperation of communities. The essay concludes that the future stability of Europe does not depend on further refinement of the existing treaty system, but on the willingness to take the constitutional dimension of federalism seriously.

Keywords: *Constitutionalism, democratic legitimacy, European Integration, European Union, federal constitution, Federalism, Johannes Althusius, Polybius, shared sovereignty, state formation, treaty law*

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PART 1 — ANALYSIS OF THE DEBATE ON EUROPEAN UNIFICATION

1 Introduction and Problem Statement

Since the end of the Second World War, European cooperation has been underpinned by a fundamental conviction: lasting peace on the European continent requires an institutional form of cooperation that prevents European states from once again confronting one another in armed conflict. The political generation that took the first steps towards European integration after 1945 faced the immense task of creating an alternative to centuries of rivalry between sovereign states. The European Coal and Steel Community (1951), followed by the European Economic Community (1957), constituted the first institutional outcome of this endeavour.

From the outset, however, there was a fundamental difference of view as to the ultimate nature of this cooperation. On the one hand were those who sought to develop Europe into a federal political community, based on a democratic constitution in which citizens would ultimately constitute the source of political legitimacy. On the other

hand, were those who believed that European cooperation should primarily continue to rest on treaties between sovereign states.

This tension has never been fully resolved. It remains one of the most fundamental constitutional questions facing the European Union.

The debate is not merely about terminology. It concerns the nature of political power, democratic legitimacy and the legal structure upon which a political community is built. According to classical constitutional law, a federation is not simply a form of cooperation between states. It is a distinct political legal order in which the whole and its constituent parts – the federal government and the constituent states – derive their powers from a constitution. That constitution determines the distribution of power, protects the rights of citizens and establishes the boundaries within which political institutions operate.

A treaty system, by contrast, follows a different logic. It comes into being because independent states conclude agreements and voluntarily entrust powers to one another or to common institutions. The states remain the primary holders of sovereignty. Treaties can be amended, extended or withdrawn from by the parties that concluded them. Legitimacy therefore ultimately rests with the states as the parties to the treaties, rather than directly with citizens as the constituent power.

It is precisely here that the constitutional tension of the European Union lies. In the course of its development, the EU has acquired an increasing number of characteristics of a political community: it has a directly elected – but elected on a Member State-by-Member State rather than a trans-European basis – European Parliament, a common legal order, an internal market, a monetary union and policy areas that have a profound impact on the daily lives of citizens. At the same time, its legal foundation remains based on treaties between Member States.

The central question of this essay is therefore: Can a federal political order emerge from a system that, constitutionally speaking, was not designed as a federation?

The answer defended in this essay is that this is not possible without a fundamental constitutional transition. A paradigm shift.

The history of European integration demonstrates that the treaty model has brought significant successes. It has contributed to economic interdependence, institutional cooperation and peace between formerly rival states. An analysis of the European Union's current problems, however, makes clear that the same structure also has limitations. Whenever conflicts arise concerning migration, internal borders, security, foreign policy, budgetary discipline, the relationship between national and European competences, and its position in the geopolitical order, it becomes clear time and again that the Union possesses limited constitutional instruments with which to resolve these tensions in a lasting manner.

The recurring solution has consistently been sought in new treaties, treaty amendments and institutional adjustments. These measures address symptoms but leave the underlying constitutional question unresolved.

This position is not universally shared. Due to the absence of a commonly accepted understanding of the question 'Which competences belong to the European Union, and which belong to the EU Member States?', certain legal phenomena have emerged within the diffuse treaty-based system that suggest an ongoing process of federalisation of the EU. These federal-like phenomena include: (a) EU law has direct effect within the Member States; (b) it takes precedence over national law; and (c) the Court of Justice has significantly developed the autonomy of the EU legal order. These are phenomena *sui generis*: self-standing entities designed to provide competences where the existing legal framework does not provide for them.

They reflect what I call the 'mouse-elephant syndrome': the mouse that wishes to become an elephant occasionally receives, through treaty amendments and case law, genes from an elephant within its DNA structure, leading some to assume that the mouse will ultimately become an elephant by itself. To characterise this gradual process of phenomena that appear to make the EU susceptible to developing into a federal state, Sacha Garben¹ uses terms such as 'competence creep', 'competence leak', 'legal engineering' and 'constitutionalisation by stealth'. The latter refers to constitutional development taking place without a clear and explicit political decision to that effect. The Court of Justice has played an important role in this process: the judiciary effectively places itself in the position of the political decision-maker.

According to Garben, the EU is situated between two constitutional models. The source of European competences is to a significant extent confederal, whereas the operation and scope of those competences sometimes appear federal. Garben refers to this as the '(con)federal conundrum'. The European Union is therefore neither simply a federation nor a confederation, but a hybrid construct whose constitutional basis has never been fully settled. According to her, this results in a

fundamental 'constitutional un-settlement': the constitutional position of the EU has not been definitively resolved.

I would add that, in attempts to resolve this conundrum, these federal-like phenomena function as system errors within the treaty-based legal framework. Rather than strengthening that framework through the introduction of quasi-federal elements, the allocation of competences that are alien to the treaty-based system increases uncertainty—and consequently also the unease—regarding the political and legal credibility of the EU. These purported federal phenomena are essentially hostile to the system, in the sense that they attempt to mitigate deficiencies in the treaty-based framework by introducing phenomena that are not inherent to that framework, thereby disrupting rather than strengthening its order. I return to this issue in Chapter 3, where I discuss 'institutions *sui generis*' and the concept of 'entropy' as disorder and chaos within a system.

The core argument of Garben's book, *The Competence Question in the (Con)Federal European Union*, can be summarised in one proposition: the persistent uncertainty about the competences of the central EU authority vis-à-vis those of the Member States is not an accidental legal problem, but the consequence of a long-standing unresolved constitutional question concerning the very nature of the European Union itself. I would add: treat a treaty-based system as a treaty-based system and a federal system as a federal system. They are fundamentally different political and legal identities, and it does them a great disservice to attempt to merge them and then claim that this constitutes constitutionally grounded democratic progress.

This situation is not unique in history. Earlier attempts to organise international peace and cooperation exclusively through treaty-based mechanisms have likewise revealed structural limitations. The League of Nations after the First World War provides a historical example. The premise was that states could jointly safeguard peace through cooperation and obligations established by treaty. In practice, however, an organisation without sufficient constitutional authority of its own remained dependent on the willingness of individual states to act collectively. The result was a second world war.

The question that Europe must answer once again today is therefore not only political but also constitutional in nature. Is the treaty-based European Union the endpoint of institutional development, or is it a transitional phase towards a different political order?

I defend the latter position. The European Union should not be regarded as a failed project, but as a historical stage of development that has reached its own limits. The task is not to dismantle European cooperation, but to perfect it constitutionally. Not through yet another amendment of the treaties, but through the construction of an entirely new order: a federal state.

In this context, it is important to distinguish between federalisation as a political slogan and federalisation as a constitutional-law process. The word 'federal' is regularly used in the European debate today, but often without making clear what legal consequences the concept entails. A federation is not simply a Union that cooperates more extensively across more policy areas, or that shares more competences. It is a constitutional order in which citizens and constituent territories jointly form the foundation of a new political community.

The historical development of federal states demonstrates that such orders generally emerge at moments when existing structures are unable to provide adequate answers to new challenges. The United States of America emerged from the need to replace the weakness of the Confederation with the strength of a federation. Switzerland transformed in 1848 from a confederation into a federal state in order to overcome internal divisions.

¹Sacha Garben, *The Competence Question in the (Con)Federal European Union*, Oxford University Press, 2025.

Belgium's federalisation is noteworthy. Alongside Germany and Austria, it is the third country within the European Union that can be considered a federal state. Between 1970 and 2011, through six successive and far-reaching state reforms, Belgium was transformed from a decentralised unitary state into a federal state based on a federal constitution. This transformation was preceded by two hundred years of conflict between French-speaking Wallonia and Dutch-speaking Flanders. As a result of geopolitical shifts in the distribution of power following the Napoleonic period, these two distinct cultures were, as it were, confined within borders that suited neither of them. Wallonia dominated Flanders, particularly in economic terms. For two hundred years, Flemings were unable to obtain management positions, neither in business nor in government. The deaths of many Flemish soldiers in the First World War because they did not understand the orders given by French-speaking officers helped set the process of federalisation in motion after the Second World War. Federalisation, with the constitutionally guaranteed equality of these two parts of the state, finally brought stability.

It is not clear how many federal states currently exist. The number ranges between twenty-five and twenty-eight. This has to do with the question of whether they are constructed in a centripetal manner (from the bottom up) or in a centrifugal manner (from the top down, as a form of decentralisation or devolution). I myself use a figure of twenty-seven federal states.

In a considerable number of federations, the need to manage serious internal divisions and conflicts was the reason for establishing a federal state. This was true not only of the United States (1787) and Switzerland (1848), but also of Bosnia and Herzegovina (1995). The same applies to India, Nigeria and Nepal, reflecting a pattern of federalism as a constitutional and institutional means of making territorial, religious, ethnic, linguistic or national divisions within a single state governable. Australia and Malaysia are federations in which such problems were not, to the same extent, reasons for federalisation.

Federations emerge when politically independent or distinct communities conclude that they can no longer manage certain essential problems on their own or through treaties, while at the same time they do not wish to relinquish their political independence. They therefore find a solution in sharing their sovereignty with that of a federal authority.

The European Union now finds itself at such a historical crossroads. The question is no longer merely how cooperation between states can be improved, but whether the current legal structure remains suitable for the political reality that it has itself brought into being.

From this perspective, the debate on a federal Europe must also be reopened. Not as an abstract ideal, but as a constitutional-law consequence of a process that has been under way for decades. The central proposition of this essay is therefore straightforward: a treaty system can organise cooperation between states, but it cannot give rise to a fully-fledged federal political community. That requires a democratic constitution.

2 The Historical Misunderstanding: Treaties versus Constitution

The constitutional tension that characterises the European Union today is not a recent phenomenon. It arose already in the first years after the Second World War, when European political thinkers and statesmen were confronted with the fundamental question of how the centuries-long cycle of European wars could be broken.

The Second World War had not only caused a military and humanitarian catastrophe but had also exposed a profound political crisis. The traditional system of sovereign nation states, in which states formally existed independently alongside one another and regulated their mutual

relations through treaties, had for centuries contributed to an unstable balance of power. That system had failed to prevent Europe from being plunged twice within a single generation into a devastating war.

For a number of European federalists, the conclusion was clear: peace could not be achieved solely through better agreements between states. In their view, the problem lay precisely in the structure of a political system in which states ultimately determined for themselves which obligations they would undertake and when they could depart from them. Lasting European peace therefore required a new political order in which states would share their sovereignty within a constitutional framework.

One of the most influential documents in which this idea was articulated was the Ventotene Manifesto of 1941, written by Altiero Spinelli, Ernesto Rossi and Eugenio Colomni during their exile on the Italian island of Ventotene. The manifesto argued that the traditional conception of absolute national sovereignty was a major cause of European conflicts. The solution was not to be sought in a new balance between nation states, but in a federal European structure based on a democratic constitution.

For Spinelli and his fellow authors, federalism was not a more intensive form of international cooperation, but a fundamental transformation of the political order. A federation meant that citizens would no longer be politically organised exclusively through national states but would become directly part of a new European legal community. The legitimacy of that community would ultimately have to derive from the constituent power of the European people.

After 1945, however, this vision did not become dominant. European political practice chose a different route. Under the influence, among others, of Robert Schuman and Jean Monnet, the Schuman Declaration of 1950 opted for gradual integration through treaties and functional cooperation. The thinking behind this was pragmatic, but also short-sighted. Pragmatic in the sense that political federalisation was not feasible in the short term, but economic cooperation in specific areas could bind countries together to such an extent that further integration in the form of a federal Europe would eventually follow of its own accord. Short-sighted in the sense that the failure of the treaty-based League of Nations (1919–1940) was not taken as a lesson, and the same mistake was made in the period 1945–1950 by once again basing the necessary cooperation on treaties.

The repetition of the choice for a treaty-based strategy became visible in the establishment of the European Coal and Steel Community in 1951. By placing the production of coal and steel – the raw materials essential to warfare – under joint management, an attempt was made to make a new war between France and Germany materially impossible.

Although short-sighted, this choice was historically understandable. After 1945, Europe was in a situation in which national governments were scarcely prepared to transfer their sovereignty directly to a federal authority. The memory of war, occupation and dictatorship made caution necessary. An immediate European constitution based on a federal model proved politically unfeasible. Yet it was precisely here that the fundamental misunderstanding arose which subsequently became increasingly difficult to correct.

The idea that a series of treaties would ultimately and inevitably result in a federal constitution assumed that institutional cooperation would automatically lead to constitutional unification. European history, however, has demonstrated that these are two entirely different processes: a treaty-based system does not automatically evolve into a federal system, however often the treaties are amended in order to intensify and deepen cooperation.

Greater cooperation between states does not necessarily mean the formation of a new political community. States can share competences

for a long period, create common institutions and develop common rules without this automatically resulting in a federal state. What is required for that is a constitutional moment: an explicit decision whereby the political community itself determines the foundation, structure and limits of its authority. That moment has repeatedly been postponed.

This explains why European integration was able to continue expanding without ever taking the constitutional step. As a result, the present system is highly heterogeneous. The European treaties have developed a complex system in which European institutions exercise powers that go beyond those of traditional international organisations. The Court of Justice of the European Union, for example, has developed the principles of the primacy and direct effect of European law. The European Parliament has evolved from an advisory body into an elected political institution, but not into a parliament in the traditional sense. Although directly elected, it is elected on a national rather than a trans-European basis. The European Commission performs functions that partly resemble those of an executive government. And the European Council of twenty-seven heads of government and heads of state, which is not democratically elected, decides on the most important aspects of treaty-based cooperation, with five permanent members possessing a right of veto. This heterogeneity of structures and procedures, responsibilities and competences prevents the transition to a constitutional paradigm.

Thus, the fundamental source of authority remained vested in treaties between Member States. The European Union consequently acquired a hybrid character: according to its principal actors, it resembles a federal structure in certain respects, but lacks the constitutional foundation required for a legitimate federation. It also contains systemic flaws that hollow out the complex EU system from within.

This problem was recognised at an early stage by federalists within European movements. They saw that, although the treaty method made progress possible, it also contained a structural limit. A system that derives its legitimacy from states can scarcely transform itself into a system in which citizens become the primary source of sovereignty.

This tension resurfaced during the discussions surrounding the European Political Community in the 1950s. Following the failure of the European Defence Community in 1954, the immediate prospect of political federalisation largely receded into the background. European integration shifted definitively towards economic cooperation. A fundamental choice was thereby made: Europe would function practically first and become constitutional only later. Automatically, simply by continuing to amend the treaties.

It cannot be denied that this strategy has produced results. European cooperation has promoted peace and prosperity and has integrated former adversaries into a common political and economic framework. At the same time, however, the original constitutional question remained unanswered. The history of the European Union can therefore be read as a prolonged attempt to create a federal reality without the constitutional act that is necessary to establish it.

Later developments confirm this pattern. Every major European crisis led not to a constitutional revision of the political order, but to a new temporary solution through the treaties. The Single European Act, the Treaty of Rome, the Treaty of Maastricht, the Treaty of Amsterdam, the Treaty of Nice and ultimately the Treaty of Lisbon were each attempts to adapt the existing system to new circumstances. Yet every adjustment remained within the same logic: states negotiate over the extension or limitation of competences. The citizens of Europe did not become the direct founders of a new constitutional order.

It is precisely for this reason that the European Convention of 2002–2003 was of such historical importance. For the first time in a long period, Europe appeared willing to pose the constitutional question

explicitly. The question was no longer merely how the existing treaties could be improved, but whether Europe required a constitutional foundation.

The outcome of that Convention, however, once again revealed the tension between treaty-based thinking and constitutional thinking. At the beginning of the twenty-first century, the European Union was faced with a choice that ultimately was never fully made: would it develop into a democratic federation, or would it continue to pursue its development within the existing treaty-based legal framework?

The next phase of this process – the European Convention of 2002–2003, the Constitutional Treaty of 2004 and the Treaty of Lisbon of 2007/2009 – therefore does not constitute a technical chapter in European history, but a constitutional turning point. It was the moment at which it became clear how difficult it is to reconcile a federal ambition with a non-federal legal foundation. I shall develop this argument further below.

3 From the European Convention to the Treaty of Lisbon: The Missed Constitutional Breakthrough

At the beginning of the twenty-first century, a historic opportunity appeared to be emerging within the European Union to place the constitutional question once again at the centre of the debate. The enlargement of the Union to include Central and Eastern European countries, the institutional problems associated with a growing number of Member States, and the need for greater democratic legitimacy made it increasingly clear that further adaptation of the existing treaty system was becoming more difficult.

At the European Council in Laeken in December 2001, the Heads of State or Government therefore decided to convene a European Convention. The Convention was tasked with developing proposals for the future of the European Union. This did not concern institutional reforms alone, but explicitly also the question of how Europe could be brought closer to its citizens and how the democratic legitimacy of the Union could be strengthened.

The Convention was chaired by the former French President Valéry Giscard d'Estaing and consisted of representatives of national parliaments, governments, the European Parliament, the European Commission and representatives of candidate countries. Approximately 105 members took part in the process.

What was distinctive about this Convention was that it did not operate exclusively as a traditional intergovernmental negotiation between governments. For the first time in a long period, an attempt was made to conduct a broader constitutional debate on the nature and future of Europe. The question was raised as to whether the European Union should no longer be regarded solely as an arrangement for cooperation between states, but as a political community with its own constitutional identity.

The result was the draft Treaty establishing a Constitution for Europe, presented by the Convention in July 2003. The document was intended to constitute a fundamental simplification and restructuring of existing European law. It brought together the existing treaties, formulated fundamental rights more explicitly and introduced elements that clearly pointed towards a more constitutional order.

The designation of the document, however, immediately revealed the fundamental tension that had accompanied European integration since 1945. It was designated a 'Constitutional Treaty': a constitutional treaty.

From the perspective of constitutional law, this formulation is problematic. A constitution and a treaty represent two different legal categories. A constitution is the fundamental legal framework of a political community and ultimately derives its legitimacy from the

constituent power of citizens. A treaty, by contrast, is an agreement between existing political entities, led by administrators, which jointly establish arrangements for cooperation. A treaty between two states can be a strong formula because both states have an equal interest in its proper functioning. This is not necessarily the case with a treaty between more than two states, a form of multilateral cooperation. A plurality of interests can then obstruct the operation of treaties. And that is precisely what happens when the outcome of common decision-making harms the interests of one or more states. In such circumstances, the Roman-law maxim *pacta sunt servanda* – agreements must be kept – is disregarded. Even in Roman times, it was understood that within a treaty-based system there can never be certainty that parties will comply with their obligations.

The use of the term ‘Constitutional Treaty’ attempted to connect these two worlds: on the one hand, the ambition of constitutional development; on the other, the political reality of a Union that was still based on treaties between Member States. It was precisely this hybrid construction that illustrated the fundamental difficulty of the European project. The intention was to introduce the constitutional characteristics of a federal order without taking the constitutional step itself.

Nevertheless, the proposal ultimately remained the product of negotiations between states. European citizens were not directly involved as the constituent power. The text was not drafted by a European constituent assembly that, acting on behalf of citizens, created a new political order, but by a Convention operating within the existing framework of cooperation between Member States.

That distinction proved politically decisive.

On 29 October 2004, the Treaty establishing a Constitution for Europe was signed in Rome by the Member States. The location was symbolic: the same city in which, in 1957, the treaties establishing the European Economic Community had been signed. The intention was clear: Europe was to enter a new constitutional phase. But this attempt failed. In 2005, France and the Netherlands rejected the document in referendums. The reasons for this were diverse and concerned both substantive objections to aspects of the European project and concerns about democratic control, economic consequences and national sovereignty.

To understand this failure, the following must be considered. The dispute over the choice between a constitutional order and a treaty-based order lies deeply embedded in the question: where does primacy lie? In ‘law’ or in ‘politics’? It is politics that chooses to codify legal rules. But once codified, politics is also bound by those rules and is expected to comply with them – both in their substance and in their intended purpose. In this case, the political intention was to allow heads of government to govern with complete freedom as they saw fit; and, whenever circumstances made this inconvenient, to amend the treaties and adjust the rules, but without accepting the constraints of a democratic system of law that does not always facilitate such freedom. By constructing a ‘Constitutional Treaty’, an appearance was created that these two mutually exclusive options could be reconciled. Legal experts characterised this construction as a *constitutio arbitraria*, an arbitrary or dubious constitution. The response from ‘Brussels’ was: ‘This is a construction *sui generis*, a legal phenomenon that stands on its own.’ Law students learn that politicians sometimes resort to such a formula: the creation of a phenomenon that does not fit within generally accepted legal standards, which subsequently survives for some time as an island within those standards but, owing to its lack of genuine integration into the law, sooner or later dies out. In this case, that occurred as early as 2005.

The creation of a *sui generis* phenomenon is a form of the aforementioned ‘legal engineering’. When the law obstructs politicians in

their desire to make decisions, they devise an ad hoc construct. This not infrequently leads to internal conflicts between politicians and legal experts.

The political consequence was that the purported constitutional project was abandoned. The European Union did not choose to reopen the discussion about its foundations but returned to the familiar method of treaty amendment.

The result was the Treaty of Lisbon.

The Treaty of Lisbon, signed in 2007 and entering into force on 1 December 2009, retained a large part of the substance of the Constitutional Treaty. Many institutional reforms were preserved, but the explicit constitutional symbolism disappeared. References to a European ‘Constitution’, the designation of European symbols in a constitutional context, and formulations that too strongly evoked state formation were removed. A significant choice was thereby made. The European Union retained the institutional advances of the Constitutional Treaty but had to abandon its constitutional ambition because the irreconcilable could not be reconciled by fiction.

The Treaty of Lisbon can therefore be regarded as a form of deconstitutionalization: the Union acquired greater competences and more refined procedures, but without taking the step towards an explicit constitutional foundation.

This led to a paradoxical situation. Today, the European Union possesses certain characteristics of a federal legal order: an autonomous legal order, supranational institutions, a common currency for a large proportion of the Member States, and legislation that has direct consequences for citizens. At the same time, however, it remains legally based on treaties whose ultimate authority rests with the Member States.

This tension explains many of Europe’s current problems. Whenever fundamental political choices have to be made, the Union returns to negotiations between national governments. The European institutions can act only within the competences conferred upon them by the treaties. This creates a system in which responsibilities are dispersed and in which citizens often find it difficult to determine who actually bears political responsibility.

From a constitutional perspective, this is the core of the European impasse.

The Union has developed into something more than an international organisation, but less than a federal state. It occupies an intermediate form that is historically interesting and institutionally innovative, but which at the same time becomes increasingly vulnerable as the political challenges grow greater.

The experience of the European Convention therefore demonstrates a fundamental lesson. Europe’s problem is not a lack of institutional creativity. On the contrary: for more than seventy years, European integration has built up an extensive body of rules and institutions. The problem lies deeper. It concerns the question of what political authority ultimately rests upon.

A federation cannot arise solely through ever-deeper cooperation between governments. Ultimately, such cooperation requires a constitutional moment in which the political community itself determines how power is to be distributed, what rights citizens possess and which institutions are authorised to act on behalf of the whole.

The European Convention of 2002–2003 came close to that moment but did not reach it. The Treaty of Lisbon subsequently confirmed the choice to continue the treaty model.

The fundamental question of European integration therefore remained unanswered: does Europe ultimately wish to become a federal political community, or will it remain an ever more developed form of cooperation between sovereign states? As long as that question is not answered constitutionally, the European Union will remain trapped

in a structural tension between its political ambitions and its legal foundation.

4 Reform without a Constitutional Breakthrough

The failure of the 'Constitutional Treaty' did not mark the end of the discussion about the institutional future of the European Union. On the contrary, many of the practical problems that had given rise to the European Convention remained. The enlargement of the Union, the need for more efficient decision-making and Europe's growing role on the world stage made further reforms necessary.

The political solution was found in the Treaty of Lisbon, which was signed in 2007 and entered into force on 1 December 2009. This treaty incorporated a large part of the substantive reforms contained in the 'Constitutional Treaty', while at the same time removing the constitutional terminology that had proved too politically sensitive.

The symbols referring to state formation disappeared. The designation 'Constitution' was replaced by 'Treaty'. References to a European constitution, European symbols with a constitutional-law character, and terminology that suggested a process of federal development were largely removed. An important signal was thereby given: institutional deepening was acceptable, but constitutional transformation remained politically undiscussable.

This choice reflected the fundamental tension within the European project. On the one hand, the European Union was by then operating in areas traditionally belonging to states: it possessed its own legal order, a common market, a monetary union for a large proportion of its members, shared regulation and institutions with a direct impact on citizens. On the other hand, its legal foundation continued to consist of treaties between Member States. The result was a political construct with certain federal characteristics, but without a federal constitution.

From the perspective of classical constitutional law, this constitutes a particular situation. A federal state is not primarily characterised by the amount of competences exercised at central level, but by the constitutional manner in which those competences are organised. The essence of federalism lies in a durable sharing of sovereignty between the whole and its constituent parts, laid down in a constitution that stands above day-to-day political power relations as the embodiment of 'law' standing above 'politics'.

The Treaty of Lisbon once again opted for the treaty-based method. The Member States remained the 'masters of the treaties', thereby placing 'politics' above 'law' as a matter of principle. Every significant amendment to the European legal order requires the consent of national governments and depending on national constitutional rules, national parliaments or referendums.

This arrangement has had advantages for those exercising political authority. It made further cooperation possible without a complete transfer of state power to a European federal authority. At the same time, however, it also generated structural tensions. When common interests conflict with national political priorities, there is no fully developed constitutional mechanism for resolving such conflicts at federal level.

This is precisely where the difference between a federation and a confederation lies. In a federation, both the federal level and the constituent states derive their competences directly from the constitution. In a confederal system, the Member States remain the primary source of authority and act jointly on the basis of arrangements that they themselves can amend.

The European Union therefore occupies a hybrid position. It is more than a conventional international organisation, but less than a federal state. For a long time, this intermediate position was able to function because economic growth, geopolitical stability and political willingness to compromise could absorb the tensions.

The challenges of the present, however, reveal the structural limits of this model. Decision-making on defence, energy, migration, fiscal policy², economic strategy and foreign policy is becoming increasingly difficult when fundamental choices remain dependent on negotiations between twenty-seven national governments with different interests and political agendas.

The central question therefore arises once again: can a system designed as cooperation between states ultimately develop into a federal political order?

The answer to this question will partly determine Europe's future development. If federalisation is understood solely as a further extension of competences within the existing treaty system, the fundamental constitutional question remains unanswered. If, by contrast, federalisation is understood as the creation of a democratically legitimized federal order, this requires a different approach: not the endless amendment of treaties, but the design of a constitution.

The experience of the European Convention and the Treaty of Lisbon therefore reveals an important historical pattern. Europe has repeatedly attempted to achieve federal objectives without taking the constitutional step that federalisation requires. The institutional history of the European Union can thus be read as a continuing attempt to organise the consequences of federal development without fully accepting its legal consequence.

This tension forms the background to the contemporary debate on European federalisation. It also explains why different federalist movements within Europe draw divergent conclusions about the way forward. These will now be considered.

5 The British Federal Union and the Forgotten Constitutional Dimension of European Federalism

The failed attempts at constitutionalizing European cooperation described above cannot be properly understood without knowledge of their background. The debate about a federal Europe is not a recent political issue. It belongs to the oldest and most fundamental debates about the future political ordering of the European continent. From the end of the nineteenth century onwards, but particularly in the wake of the catastrophic experiences of the First and Second World Wars, it became increasingly clear that the traditional system of competing sovereign states did not provide a stable foundation for lasting peace. The question, however, was not merely whether Europe should cooperate, but above all on what legal and political foundation that cooperation should be organised.

It was precisely on this point that a fundamental division emerged which remains unresolved to this day. On the one hand were those who viewed European cooperation as a process based on treaties between independent states. On the other were those who believed that a lasting European political order would ultimately be possible only through the creation of a constitutional federation in which sovereignty is shared between a European whole and its constituent parts.

One of the most important early representatives of the latter school of thought was the British Federal Union, founded in 1938. The organisation emerged at a time when the European political order was visibly disintegrating. The rise of totalitarian regimes, the weakness of the League of Nations and growing international tensions made clear that the existing system of treaties between states provided insufficient protection against new wars.

²A federal system allows for the establishment of a Federal Union between the federal authority and the member states. This means that the federal government and the member states share responsibility for taxation and public expenditure. The federal authority levies federal taxes and ensures that this revenue is distributed between wealthier and less wealthy states, particularly in the event of disasters.

The intellectual force behind Federal Union came to a significant extent from Philip Kerr, 11th Marquess of Lothian. As a diplomat and statesman, Kerr had experienced at close quarters how the post-war treaty system functioned after 1919. As secretary to the British Prime Minister David Lloyd George during the negotiations surrounding the Treaty of Versailles, he witnessed not only the difficulties of international cooperation, but also its structural limitations.

Initially, many politicians believed that the establishment of the League of Nations would usher in a new phase in international history. An organisation in which states made agreements through treaties to prevent war appeared to be a logical response to the horrors of the First World War. But Lord Lothian gradually reached a different conclusion. In his view, the problem was not the absence of sufficient agreements between states, but the absence of a higher constitutional authority capable of actually safeguarding common interests.

In doing so, he touched upon a central point of federal constitutional theory: a federation is not simply a more intensive form of international cooperation. It represents a different legal category. Whereas treaties are based on the voluntary consent of sovereign states which retain their ultimate authority, a federation rests upon a constitution that directly establishes the competences, responsibilities and limitations of both the whole and its constituent parts.

Kerr therefore regarded the American federal model as an important example. Following the failure of the Articles of Confederation in 1787, the United States had chosen a constitutional federation. The thirteen individual states, formerly colonies, retained substantial powers, but at the same time accepted a federal authority that was necessary for safeguarding common interests. According to Kerr, the American experience demonstrated that a lasting political community could not be built upon continual negotiations between autonomous states, but upon a shared constitutional foundation.

The establishment of the Federal Union in 1938 was therefore more than a call for European cooperation. It was an attempt to confront the fundamental problem of constitutional law: how can different political communities retain their independence while at the same time creating a common authority that stands above conflicting national interests?

In 1939, Kerr published his influential work *The Ending of Armageddon*, in which he not only advocated a federal European order, but also explored the possibility of a world federation. His starting point was that humanity had repeatedly attempted to resolve conflicts through a balance of power and treaties, while the underlying structural cause — the absence of a common constitutional authority — remained untouched.

When Kerr was appointed British Ambassador in Washington in 1939, his role within Federal Union changed. One striking detail is that he left for Washington on 1 September 1939, the day on which Hitler invaded Poland. His diplomatic position made active involvement impossible, but his ideas continued to provide direction for the movement. His death in 1940 was a loss to British and European federalist thought, but his analysis remained influential.

Federal Union continued to develop after his departure and played an important role during and immediately after the Second World War in the debate about Europe's future political order. The organisation regarded the post-war period as a historic moment at which Europe had to make a fundamental choice: return to a system of separate states cooperating through treaties or take the step towards a constitutional federation?

History shows that the first option ultimately prevailed. European integration after 1945 was shaped by treaties: the European Coal and Steel Community, the European Economic Community and, later, the European Union. This treaty structure has unquestionably produced

successes. It has contributed to economic cooperation, political stability and an unprecedented period of peace among the participating states.

But the success of a system during a particular historical phase does not automatically mean that the system is also suitable for the next phase. The question that must be asked again today is whether a treaty-based organisation of states possesses sufficient institutional strength to meet the challenges of the twenty-first century.

The debate therefore returns to the central question formulated by Kerr and Federal Union as early as the 1930s: can a political community function sustainably when its ultimate authority remains based on agreements between governments, or does it require a constitutional foundation in which citizens directly constitute the source of legitimacy?

That question provides the bridge to the next development in European federalist thought: the role of Winston Churchill, the revival of Federal Union, and the emergence of the Federal Alliance of European Federalists (FAEF) as further attempts to give European integration a constitutional dimension after all.

6 Winston Churchill and European Federalism: A Vision with an Unresolved Paradox

The Federal Union was not the only British force to reflect, both before and after the Second World War, on a federal ordering of Europe. One of the most influential European statesmen to engage with this question was Winston Churchill. His position was distinctive because, on the one hand, he was one of the most forceful advocates of European cooperation, while, on the other, he remained reticent about its constitutional consequences for the United Kingdom itself.

A first, little-known but historically remarkable moment occurred in June 1940. While the German armies had invaded France and the French government was faced with the dramatic choice between continuing the war or seeking an armistice, Churchill made an exceptional proposal.³

On 16 June 1940, shortly before France surrendered to Germany, he offered the French Prime Minister, Paul Reynaud, by telephone to establish a full political union between France and Great Britain. The proposal envisaged the two countries forming a single political entity: the Franco-British Union. The plan went far beyond ordinary military cooperation. It provided for a joint war cabinet, a common foreign policy, joint defence, integrated economic and financial structures and even shared citizenship for Britons and French citizens. The war would be continued jointly from Britain and from French territories outside the European mainland.

From the perspective of constitutional law, this proposal was revolutionary. Had France accepted it, two sovereign states would have been willing to place part of their national sovereignty within a common political structure. The plan thereby displayed the characteristics of what would later be termed a federal arrangement.

The actual circumstances, however, made its implementation impossible. While Reynaud was speaking to Churchill by telephone and his Cabinet was meeting elsewhere, the political situation had already changed dramatically. Marshal Philippe Pétain had already convinced the other ministers that an armistice was necessary. The majority of the French ministers ultimately rejected the British offer. Reynaud resigned and Pétain became the leader of the new Vichy regime.

Although the Franco-British Union disappeared from political reality almost immediately, the moment remains highly significant because it demonstrates that, in an existential crisis, Churchill was prepared to take a step that went far beyond classical cooperation between states.

³Bosco, Andrea, *June 1940, Great Britain and the First Attempt to Build a European Union*, Cambridge Scholars Publishing, 2016.

The event illustrates an important point in the history of federalism: political circumstances often determine whether ideas become reality. The absence of a federal solution does not necessarily mean that the idea itself is wrong; sometimes the historical moment in which society and its political leaders are prepared to take the necessary step is simply lacking. The question that may be derived from this is: 'Is it foreseeable that such a historical moment, for example in the form of a third world war, will present itself in the near future?'

After the war, Churchill returned to the theme of European unification. On 19 September 1946, at the University of Zurich, he delivered his famous speech in which he called for the formation of 'A kind of United States of Europe'. The essence of his message was that Europe needed a new political structure in order to prevent a repetition of European wars. In particular, he regarded reconciliation between France and Germany as a necessary condition for a stable European order.

Churchill explicitly used the concept of the United States of Europe. He referred to the American federal model as a source of inspiration and emphasized that Europe needed a political organisation that was greater than separate national interests. At the same time, however, his speech contained an important qualification. Churchill stated: 'We British have our own Commonwealth of Nations.'

By this he made clear that he did not envisage the United Kingdom as a future participant in a European federation. According to Churchill, Britain occupied a distinct historical position within the Commonwealth and would, together with the United States and other allies, support the European construct, but would not necessarily form part of it.

In retrospect, it is precisely this position that constitutes the paradox in Churchill's thinking. He advocated for the European continent a political model whose full implication he was unwilling to draw for his own country. He recognised the necessity of a European federal order but did not extend that federal logic to the constitutional position of the United Kingdom.

The history after 1945 would make this paradox increasingly apparent. The British Empire began to disintegrate rapidly. The independence of India in 1947 marked the beginning of a broader wave of decolonisation. Pakistan followed in the same year, Ceylon (present-day Sri Lanka) in 1948, Ghana in 1957 and Nigeria in 1960. Other former British territories followed later.

This development fundamentally altered the international position of the United Kingdom. The notion that the Commonwealth could provide an equivalent alternative to European political integration became increasingly difficult to sustain. It is also noteworthy that several former British colonies subsequently became federal states themselves. Canada, Australia, India, Pakistan, Nigeria and Malaysia developed federal state structures in which regional diversity was organised constitutionally. This produced a historical irony: parts of the former British Empire adopted a federal form of state, while the United Kingdom itself retained an uncoded constitutional tradition and a unitary state structure with partial decentralization under the name of devolution.

The subsequent accession of the United Kingdom to the European Communities in 1973 and the eventual Brexit in 2020 demonstrate how difficult it was to maintain a sustainable position outside an increasingly integrated Europe.

From the perspective of this essay, Churchill's significance is therefore twofold. On the one hand, he was a visionary who recognised at an early stage that European peace required a new political structure. On the other, he remained constrained by the historical convictions of his own time, in which British sovereignty was still strongly connected with the global empire and the Commonwealth.

The contemporary debate on European federalisation returns to the same fundamental question that Churchill and Federal Union had already posed: how can a political order be formed that safeguards peace and common interests without reverting to the instability of competing sovereign states?

Answering that question requires not only political will, but also constitutional insight. Federalism does not mean eliminating differences between communities but organising those differences within a common legal framework.

7 Federalist Movements after Lisbon: Between Treaty Thinking and Constitutional Federalisation

The history of European federalism after 1945 reveals a remarkable paradox. For more than eighty years, the idea of a federal Europe has played an important role in political and intellectual debate, yet its practical implementation has never resulted in a European federal constitution. On the contrary, European integration has developed along a different path, namely that of successive treaties between states.

This raises the question of how the various federalist movements have assessed this development. Have they remained committed to the original constitutional ideal of a federal European state? Or have they adapted to political reality and opted for a gradual deepening of the existing treaty system?

This question is of considerable importance because it touches upon a fundamental distinction within federalist thought itself. Federalism is not merely a political objective, but also a constitutional-law method. Anyone pursuing a federal state must therefore speak not only of greater European cooperation, but also of the legal architecture upon which that cooperation must ultimately rest.

One of the oldest and best-known organisations in this field is the Union of European Federalists (UEF). This organisation was founded in 1946, shortly after the end of the Second World War, out of the conviction that Europe needed a new political order in order to prevent a repetition of its catastrophic history of warfare.

The UEF played an important role in disseminating federalist ideas during its first decades. It stood in the tradition of the aforementioned Ventotene Manifesto of 1941. That manifesto called for a break with the traditional system of sovereign states which sought to preserve peace through treaties and balances of power. Spinelli and his fellow advocates regarded national sovereignty itself as an important cause of European conflicts. Their conclusion was that peace could be guaranteed sustainably only through a federal European structure in which national states would share their sovereignty to some extent. In this respect, the Ventotene Manifesto was consistent with the classical federal idea: not the abolition of differences between communities, but the creation of a higher political framework within which differences can exist peacefully.

The post-war reality, however, proved more resistant. This way of thinking did not reach the finishing line. The governments of Western Europe were willing to cooperate, but not to establish a federal state immediately. The European Coal and Steel Community of 1951 and the European Economic Community of 1957 were therefore based not on a federal constitution, but on international treaties. This development led the UEF to adopt a strategy of basing the pursuit of a federal Europe on a treaty-based approach. The choice of the gradualist path was expressed in the idea that 'by working with treaties, a federal constitution will eventually emerge — provided that the treaties are amended often enough'.

This choice was politically understandable. After centuries of wars and conflicts over power, it was already a major step for national governments to accept common institutions. An explicit transfer of

sovereignty to a European federal authority remained inconceivable to most states.

Yet this also created a structural tension that continues to this day. European integration employed federal instruments — such as common institutions, shared competences and supranational decision-making — but without the constitutional foundation of a federal state.

Over time, the emphasis within parts of the federalist movement also shifted. The ideal of an immediate constitutional federation gradually gave way to an opportunistic approach: first pursue further integration within the existing treaty framework and possibly take a constitutional step at a later stage.

This strategy was often defended by the argument that political change proceeds incrementally. A federal European constitution could ultimately emerge from increasingly close cooperation between states. Against this stands the constitutional-law criticism that this reasoning contains a fundamental confusion of categories. A federation is not simply the endpoint of increasingly intensive international cooperation. It is a different type of political order. The transition from confederal or intergovernmental cooperation to federalism requires a constitutional decision.

American history illustrates this distinction. The United States did not become a federation because the Articles of Confederation were progressively expanded over a longer period of time. On the contrary: precisely because the confederal system displayed structural problems, it was decided in Philadelphia in 1787 to create a new constitutional order. The question that therefore also arises for Europe is whether the existing treaty system can ever make the transition to federalisation by itself.

Within this debate, the Federal Alliance of European Federalists (FAEF) emerged in 2018. This organisation deliberately adopted a different approach. Its starting point was that a federal Europe cannot be built upon an endless series of treaty amendments but requires a democratic federal constitution. The difference is not merely strategic, but principled. The question is not only how many competences Europe should possess, but who constitutes the ultimate source of authority. A federation of states can easily remain trapped in negotiations between governments. A federation of citizens requires the constitutional order to derive its legitimacy directly from the people.

From this perspective, the FAEF developed various initiatives to place the constitutional dimension of European federalisation at the centre of the debate once again. The focus was not solely on political feasibility, but above all on the legal and institutional conditions necessary for a sustainable federal system.

An important starting point in this regard is that federalism is not the same as centralization. A well-designed federal state precisely establishes a distribution of power. The federal level is granted only those competences necessary to safeguard common interests; the remaining competences remain with the constituent states or lower-level communities. This is consistent with the classical federal principles of subsidiarity, shared sovereignty and the constitutional protection of autonomy.

The debate between the various federalist movements therefore ultimately revolves around a fundamental choice. Is the existing European treaty system a necessary transitional phase on the way towards federalisation? Or is it instead a structural obstacle because it continually postpones the transition to a constitutional order?

This question is not merely theoretical. It also determines how Europe should respond to the major challenges of the twenty-first century: geopolitical uncertainty, security issues, economic competition, climate change and the protection of democratic values.

A political community that wishes to address these challenges collectively ultimately requires a form of common authority that is democratically legitimized and constitutionally constrained. This brings us to the core of the next development: the attempt by the Federal Alliance of European Federalists to do more than speak about a federal Europe, and instead to design a concrete constitutional model.

Before proceeding to discuss the approach chosen by FAEF to resolve the tension between ‘treaty’ and ‘constitution’, I will first consider the apparent revival of Federal Union in the United Kingdom.

8 The Revival of the Federal Union

During the years 1939–1945, Federal Union exerted considerable influence on the debate about the post-war European order. From the 1960s onwards, its membership declined. The organisation nevertheless continued to exist and regularly published on federalism, often in cooperation with its sister organisation, the Federal Trust.

In recent years, the Federal Union has once again become more active. It explicitly speaks of ‘rebuilding’ the organisation, with attention to new activities concerning a federal British constitution — a particularly noteworthy development in a country that still has no written (= codified) constitution — federal European cooperation and world federalism. These are positions it shares with the Federal Alliance of European Federalists (FAEF).

The revived British Federal Union therefore now advocates the codification of a federal constitution for the United Kingdom, under which the regional parts of England, Scotland, Wales and Northern Ireland, which have already undergone devolution, would become more autonomous constituent parts of a federal Great Britain than they are at present.⁴ It also advocates a federal Europe and a world federation, but it is not clear whether it takes the position that the federal Europe and the federal world should be based on a constitution rather than on treaties.

This is a crucial point for the decisions that organisations advocating a federal Europe and a World Federation will have to make. Those who continue to regard a treaty-based system as the foundation of federation are making — despite the knowledge available — the same mistake as the political leaders who established the League of Nations in 1919 and, after its failure, learned nothing from it and once again, after 1945, gave European cooperation a treaty-based foundation, which has now evolved into the European Union. The latter is creaking and straining under internal conflicts and geopolitical pressure.

It is not entirely clear where the Federal Union now stands in this dispute. It appears that it has both a *normative* and a *strategic* plan. Normative in the sense of remaining committed to the ultimate objective, namely a genuine federation that is constitutionally sound and therefore based on a constitution. But strategically, it appears for the time being to retain the treaty-based route towards that objective, in the hope that it will eventually lead to a constitutional federal Europe. This naturally raises the question of why such a gradualist approach should not also be adopted for the federalisation of the United Kingdom.

9 FAEF: From the Idea of a Federal Europe to a Constitutional Design

The history of European federalist thought is often characterized by a fundamental difference between expressing a political ideal and designing the institutional conditions under which that ideal can become reality. The aspiration for a federal Europe has existed for two centuries. Numerous thinkers, politicians and social movements have

⁴If this succeeds, the question arises as to how long it will take before Spain and Italy, with their highly autonomous regions (seventeen in Spain and twenty in Italy), follow this example and convert their own devolution/decentralization arrangements into federal status.

pointed to the need for European unity, particularly from the perspective of peace and security. Yet the question of how such a federal order should be structured in legal, constitutional and democratic terms has much less often been worked out systematically.

This is precisely where the distinction lies between a general political aspiration and a constitutionally grounded project. A federation does not emerge merely because states decide to cooperate more closely. It emerges when it is established how the common political community is constituted, how powers are distributed, and which constitutional safeguards govern the relationship between the whole and its constituent parts.

That principle forms the core of the work of the Federal Alliance of European Federalists (FAEF). This organization has not limited itself to restating the traditional call for European federalization but has attempted to take the next step: developing a concrete constitutional model for a federal Europe by working towards the composition of an actual federal constitution for Europe consisting of only ten articles. Only ten articles because the seven articles of the first federal constitution, that of the United States in 1787–1789, with 27 amendments since then, have demonstrated that a concise constitution can underpin the development of the most powerful country in the world. In making that observation, however, a clear distinction must be maintained between having a good constitution on the one hand and the conduct of those who manage to seize control of federal power and use that power to dismantle the legal system on the other. No constitution is capable of resisting such conduct indefinitely. A small number of so-called “failed federations” in Europe, Asia and Africa, which I leave outside the scope of this discussion, have succumbed to this problem.

The reason why a federal constitution consisting of only ten articles can be sufficient to enable even fifty Member States to function is easy to understand once one understands the essence of the legal structure of a federation. That essence lies in the combination of (a) shared sovereignty between the Member States and the federal authority, (b) a prohibition on the federal authority interfering in the internal order of the Member States, and (c) an obligation on the federal authority to concern itself only with a limited and exhaustive range of common interests; these are interests that an individual Member State cannot provide for on its own.

In the case of the federal constitution of the aforementioned Federal Alliance of European Federalists (FAEF), included in *The Making of the Constitution for ‘The Federated States of Europe’*, this concerns eight common interests. These constitute the domain of responsibility of the federal authority. The implementation of these responsibilities is regulated through supplementary secondary legislation, which is not suitable for inclusion in a federal constitution.

Where a federal constitution is established in a centripetal manner—that is, from the bottom up, as a movement towards establishing a central authority—this principle is easier to realise than in the case of a centrifugal establishment—that is, from the top down, as a movement towards decentralisation. In the latter case, it may happen that the pre-existing central authority can relinquish only parts of its authority with great difficulty, which manifests itself in more than ten constitutional articles.

The European debate on federalization has remained caught between two extremes since 1789. On the one hand, there is the realistic recognition that national states must deepen their cooperation in order to exercise influence jointly in an increasingly complex world. On the other hand, there is often an unwillingness to confront the constitutional consequences of such deepening. People speak of greater European unity, greater European capacity to act and greater European autonomy, while at the same time maintaining a system in which fundamental powers ultimately remain based on treaties between states.

The question that follows is simple, but constitutionally fundamental: can a federal political order emerge without a federal constitution?

The experience of existing federal states provides a clear answer. Federations are not formed through a collection of permanent negotiations between sovereign constituent parts, but through a constitutionally established distribution of power. The federal constitution forms the legal foundation upon which both the central authority and the constituent states base their legitimacy.

It is important to emphasize that federalization is not the same as centralization. A properly constructed federation is precisely based on a balance between common powers and local autonomy. Its purpose is not to eliminate differences between constituent territories, but to create a political structure in which those differences can be organized peacefully.

This insight is consistent with one of the oldest principles of federal thought: shared sovereignty. In a federal state, the sovereignty of the constituent parts does not disappear, but is reorganized within a larger constitutional framework. The federal level receives only those powers that are necessary to serve common interests; the remaining powers remain with the constituent states or lower communities.

It is precisely this principle that makes federalism particularly suitable for Europe. The continent is characterized by great historical, cultural and linguistic diversity. Unification according to a classical centralized state model would therefore not only be politically unrealistic but would also run counter to the historical development of Europe.

A federal structure, by contrast, offers the possibility of combining unity and diversity. It is a form of government in which differences are not regarded as a threat, but as an element that can be protected within a constitutional framework.

From this perspective, the Federal Alliance of European Federalists (FAEF) has focused on developing a draft European federal constitution. The starting point was not the question of how the existing treaty system could be continued for as long as possible, but a different question: which constitutional principles are necessary for a democratic federal European state to function sustainably?

This approach requires a fundamental shift in thinking about European integration. The central question is no longer which new power the member states can confer upon one another through yet another treaty. The central question becomes: what political community do European citizens wish to create, and which constitutional order is necessary for that purpose?

This shift also concerns the concept of democratic legitimacy. Under a treaty system, citizens ultimately depend on decisions reached through national governments. In a federation, by contrast, the citizen is not merely an inhabitant of a national state but is also directly part of the federal political community. The constitution then forms the direct legal foundation of the relationship between citizens, federal institutions and constituent states.

That distinction is fundamental. It is not merely a question of more efficient government, but of where political power ultimately derives its justification. FAEF has therefore deliberately chosen a constitutional approach that builds on the historical development of earlier federations. Not by simply copying an existing model, but by examining the underlying principles that federal states have in common: democratic legitimacy, separation of powers, checks and balances, protection of rights, and a clear distribution of powers.

This search ultimately led to a concrete initiative: the FAEF “Citizens’ Convention”, in which citizens and experts, rather than government representatives, jointly considered the content of a possible federal constitution for Europe.

A principled choice was thereby made. If part of Europe's problem stems from a lack of constitutional legitimacy, the solution cannot be sought exclusively in new negotiations between the same political structures that created the existing system. A new constitutional order requires a process in which citizens themselves occupy a central position. The next step in this development was therefore not another treaty conference, but an experiment in constitutional participation: FAEF's own Citizens' Convention of 2021–2022.

The European Convention of 2002–2003 had demonstrated that constitutional reform could be placed on the European agenda, but also that a process led by governments would ultimately be strongly influenced by national interests. FAEF wanted to explore what a constitutional process might look like if citizens and constitutional principles, rather than governments, were placed at its center.

A Citizens' Convention was therefore organized, inspired by the American Philadelphia Convention of 1787, where the foundations were laid for the first modern federal constitution. Over a period of six months, the 70 participants discussed the ten articles of a draft European federal constitution that had previously been included, in 2012–2013, in the European Federalist Papers by Herbert Tombeur and me. The purpose of this peer review by the 70 members of the Convention was to improve that ten-article draft. The aim was not to formulate a political compromise between states, but to examine from a constitutional perspective which minimum elements are necessary for a federal state to function.

The result was published in the book *The Making of the Constitution for "The Federated States of Europe"* (Iustitia Scripta, 2022). The work contains not only the proposed constitution, but also an extensive explanation of the political and legal choices that were made.

The limited size of the draft was deliberate. A federal constitution should provide clarity about the fundamental structure of the state, rather than become a collection of policy rules that must constantly be amended. The experience of existing federal states shows that durable constitutional documents derive their strength precisely from their principled character.

One of the central principles of the draft is that the European federation derives its legitimacy directly from its citizens. This approach therefore differs fundamentally from the current treaty model, in which the member states remain the primary actors in the process.

This does not mean that national states disappear. On the contrary, a federal European order can function only if the position of the constituent states is constitutionally protected. Federalism is not a method for eliminating diversity, but a way of organizing diversity within a common political structure.

The FAEF draft therefore starts from the principle of subsidiarity: decisions should be taken as close to citizens as possible, unless a higher level can demonstrably deal with a common problem more effectively. This prevents both undesirable centralization and a situation in which common interests cannot be adequately addressed.

Another essential component is the system of checks and balances. History demonstrates that no political structure can function sustainably when power is insufficiently controlled. Federalism therefore requires not only a distribution of powers between different levels of government, but also a distribution of power within the federal institutions themselves.

Legislative, executive and supervisory functions must be organized in such a way that no single institution can develop unlimited power. This principle constitutes one of the most important lessons from the development of constitutional democracies. Where democratic states

originally degenerate into so-called 'democratic backsliding', these lessons are not being learned.⁵

The significance of the Citizens' Convention therefore lies not solely in the concrete draft it produced. More important, perhaps, is the underlying method: bringing the European debate back to its constitutional core.

For decades, Europe has discussed integration, enlargement, powers and cooperation. Far less often has the fundamental question been asked: which constitutional form is appropriate to the political reality that Europe has by now become? A federation cannot emerge solely through the accumulation of treaties. It requires a moment in which the political community constitutionally defines itself. That moment does not mean the end of national identities, but rather the beginning of a stable relationship between different levels of political organization.

The FAEF Citizens' Convention should therefore be regarded as a contribution to a broader historical debate: not about whether Europe should cooperate, but about which constitutional form is necessary to make that cooperation democratic, effective and sustainable.

10 The Federal Transition: From Treaty Thinking to Constitutional Thinking

The question that arises after this historical and theoretical analysis is therefore no longer merely whether a federal Europe is desirable, but above all how such a transition could be achieved in legal, political and societal terms. History teaches us that fundamental changes in the form of government are never exclusively the result of institutional engineering. They arise when an existing political order reaches the limits of its capacity and when a sufficient number of social and political actors recognize that continuation of the existing model no longer offers a sustainable solution.

This insight brings us back to the core of the European problem. Since 1951, European integration has produced undeniable successes. The establishment of the European Coal and Steel Community, followed by the European Economic Community and later the European Union, has contributed to economic cooperation, mutual interdependence and an unprecedented period of peace among the participating states. The historical significance of these achievements must be fully acknowledged.

But, as already noted, institutional success in a particular historical phase does not automatically mean that the same structure will remain suitable for all future challenges. I repeat: a political organization must be capable of developing when its environment changes. This is precisely where the fundamental question at the heart of this essay arises: can a system originally designed as cooperation between sovereign states ultimately develop into a federal state, or does such a transition require a fundamental constitutional break?

This question touches upon one of the oldest themes in political philosophy: the relationship between authority and legitimacy. Since the emergence of the modern democratic constitutional state, the principle has increasingly prevailed that governmental power cannot be based solely on historical tradition, military power or diplomatic agreements between those in power. Power must be legitimized by the citizens who are subject to it.

It is precisely at this point that the thinking of Johannes Althusius connects with the contemporary debate on European federalization. His central idea that political communities emerge from the bottom up means that a federal order is not primarily a project of governments,

⁵Democratic backsliding is a process in which the democratic foundations of a state deteriorate. It can be recognized by the muffling of the media, refusal to comply with judicial decisions, and attempts to govern on the basis of emergency powers, that is, by decree outside parliamentary oversight. The purpose is to place the political leadership above the law.

but of citizens and communities that jointly create a higher form of cooperation.

This perspective differs fundamentally from the classical inter-governmental approach, in which states remain the primary actors and jointly attempt to resolve problems through treaties. Althusius reverses this logic: it is not the central authority that distributes powers downward, but communities that voluntarily unite and thereby create a common authority for those interests that they cannot adequately pursue separately.

From this perspective, a federal Europe would therefore not mean that European states disappear. On the contrary, the strength of federalism lies precisely in combining unity and diversity. National, regional and local identities can be preserved while certain common interests are organized at the European level.

This principle is summarized by the concept of 'shared sovereignty'. In contrast to the classical conception in which sovereignty rests exclusively with a single supreme ruler or a single nation-state, multiple levels share political power. No single level possesses absolute power; each level has constitutionally protected powers.

Federalism thus provides an alternative to two extremes that have historically characterized Europe: on the one hand, the fragmentation of fully sovereign states that continually compete with one another; on the other, the centralist notion that all power must be exercised from a single center.

European history demonstrates that both models have serious limitations. The period of competing nation-states between 1648 and 1945 was characterized by recurring power struggles and wars. But highly centralized state models also carry their own risks when mechanisms of control are lacking.

The federal model seeks precisely to establish a constitutional balance between autonomy and cooperation, between national distinctiveness and common action. This balance is not self-evident and requires continuous democratic development. It does, however, provide an institutional framework in which conflicts can be resolved through constitutional procedures rather than through struggles for power.

Europe therefore finds itself at a historical crossroads. The current treaty model has brought Europe a long way, but it now faces the challenge of enabling the next stage of development. The question is whether the European political community is prepared to make the transition from cooperation between states to a constitutional community of citizens. This does not mean copying existing federations. The United States, Germany, Switzerland, Belgium, Austria and other federal states have each followed their own historical paths. Europe will have to develop its own federal form, one that takes account of its cultural, historical and political diversity. But the fundamental principles of federalism are universal: a democratic constitution, the sharing of sovereignty with a clear distribution of powers, the protection of rights, an independent judiciary, and mechanisms of checks and balances.

This is precisely where the significance of the work of the Federal Alliance of European Federalists and its Citizens' Convention lies. The starting point is not that federalization should remain merely a political slogan, but that it must be translated into concrete constitutional designs. The debate therefore shifts from abstract desirability to practical constitution-making.

The next step in this analysis therefore concerns the question of what such a constitutional federal order might look like, and which lessons can be drawn from previous experiences of federal state formation. Not from the assumption that any one model can simply be adopted, but from the conviction that knowledge about the construction of federations is now available and that Europe can no longer afford to ignore it.

PART II — THE MOMENT OF EUROPEAN FEDERALISATION IS APPROACHING

11 Introduction

I may be mistaken, but developments in recent years increasingly suggest that a federal Europe, based on a democratic federal constitution, is no longer merely a theoretical ideal. It is becoming an option that can seriously be considered as a response to the structural challenges facing Europe.

The question is therefore not simply whether Europe should cooperate more closely. There is now broad agreement on that point. The fundamental question is rather on what legal and political foundation such cooperation should be organised. Should Europe continue to function as a system of treaties between sovereign states, or should it develop into a constitutional federation in which citizens are directly the source of democratic legitimacy?

This second part of the essay starts from the premise that this choice can no longer be regarded merely as a matter of political preference. It concerns the fundamental conditions under which complex political systems can function in a sustainable manner.

To understand this development more clearly, it is necessary to assess the European Union not only in the light of current political events, but also from a broader historical and theoretical perspective. Political systems, like other complex systems, have a life cycle. They emerge under particular circumstances, develop institutional patterns, reach a phase of stability, and may subsequently encounter tensions that can no longer be resolved within the existing system.

From this perspective, the current problems of the European Union are not merely a collection of separate crises. The question is whether these crises are symptoms of a deeper institutional tension: a system originally designed for cooperation between states that now carries responsibilities characteristic of a political community with federal ambitions. This has resulted in a structural imbalance within the system, accompanied by the sound of it beginning to creak under the strain. To examine this in greater depth, I wrote the book *'From the darkness of treaty-based cooperation to the Light of a Federal Europe'* (U2pi, 2026). The analysis developed in that book provides the background to the second part of this essay.

The central idea is that political systems are determined not only by their formal institutions, but also by the extent to which their structure corresponds to the problems they are expected to solve. When a system is confronted structurally with problems for which it does not possess the necessary instruments, tension arises between the expectations placed upon the system and the capacities it actually possesses.

This tension is clearly visible in the European Union today. The Union is increasingly expected to act as a geopolitical actor, a security organisation, an economic power and a defender of democratic values. At the same time, its institutional foundation remains largely based on treaties between states that formally retain their sovereignty. This creates a fundamental asymmetry: political expectations are growing faster than the constitutional capacity of the system. This requires more energy than the system can store if it is to survive and renew itself.

The next chapter examines this problem in greater detail, beginning with an outline of three forms of 'anarchy' on the European scale.

12 European Development as a Succession of Forms of Government

To place the present European situation in historical perspective, the development of Europe can be understood as a succession of different forms of political organisation.

The first European state system, from the beginning of the Common Era until the Peace of Westphalia in 1648, can be characterised as a period in which political power was closely connected with dynastic and feudal structures. Power was dispersed among different centers of authority, and the political order lacked a clear overarching authority capable of regulating conflicts in a lasting manner. I refer to this as ‘aristocratic or feudal anarchy’. It should be emphasized that “anarchy” is used here to mean the absence of an authority that has a binding function and is capable of preventing or resolving conflicts.

With the Peace of Westphalia, the modern system of sovereign nation-states emerged. States came to be regarded as independent political entities that entered into relations with one another on the basis of treaties. This model determined the international order for several centuries, but it also had a fundamental limitation: when states were unable to reconcile their interests peacefully, there was no higher authority capable of preventing or resolving their conflicts. I refer to this phase as “nation-state anarchy”. The nineteenth century and the first half of the twentieth century demonstrate its consequences. European states developed strongly in economic and cultural terms, but competition for power between them ultimately resulted in two world wars.

After 1945, a third phase of European political organisation emerged: a system of cooperation based on treaties. European integration was a historic attempt to overcome the negative consequences of the classical balance of power between sovereign states without immediately creating a federal state. This experiment has had considerable merits. It created cooperation where rivalry had previously prevailed. But the question that must now be asked again is whether this third phase — in my terminology, ‘treaty-law anarchy’ — has fulfilled its historical function and whether a new stage of development has become necessary.

According to the analysis developed in this essay, that fourth phase will be a constitutional federal Europe: a political order in which the common interests of Europe are protected by institutions that derive their legitimacy directly from its citizens. Without an underlying order of anarchy.

13 Polybius, Systems Theory and the Dynamics of Political Change

For a proper understanding of the approaching fourth phase of the European state system, the thinking of Polybius is relevant. The development of political systems is not a random process. Throughout the centuries, political philosophers, historians and legal scholars have attempted to identify patterns in the way states emerge, develop, stabilize and ultimately change. One of the earliest and most influential analyses of this process can be found in the work of the Greek historian Polybius.

Polybius lived in the second century BC and, in his work *Histories*, described the development of political systems through the concept of *Anakyklosis*: recurrence or cyclical change. By this he meant the cyclical movement through which forms of government develop: they emerge, reach a phase of stability, subsequently lose their original strength and eventually give way to a new political order.

His analysis was not a simple historical prediction, but an examination of the vulnerability of political institutions. Polybius recognised that every form of government depends upon certain conditions: the moral responsibility of those who govern, institutional limitations on power, the prevention of corruption and a sufficiently strong commitment to the common good.

When these conditions disappear, decline sets in. Not necessarily because the original ideas underlying a system were wrong, but because institutions can, over time, be used in ways that undermine their original purpose. A number of statistically based monitors of increasing autocratisation around the world, including on the European

continent, have identified the emergence of the previously mentioned phenomenon of ‘democratic backsliding’: an increasing number of originally democratic states are becoming autocratic as political leaders place themselves above the law. Symptoms include the dismantling of judicial independence, the muzzling of the media and widespread corruption.

In Polybius’ view, such states sooner or later reach a state of decline so profound that they collapse. But he also made clear that after the collapse of a political system, a new political order emerges that is better than the previous one. In this sense, his *Anakyklosis* describes an evolutionary cycle: a cycle that continually contains the seeds of improvement and renewal.

This insight is also relevant to the contemporary European debate. The European Union is, of course, not a classical state and cannot simply be compared with the political systems analysed by Polybius. Yet the same principle applies to any system, including an institutional system: its survival depends on the extent to which its structure provides an adequate response to the problems for which it is responsible. In essence, the life cycle of every system depends on whether it is capable of storing more energy than it consumes in maintaining itself and renewing itself. If it cannot do so, an identity crisis emerges. The system then collapses. Those who do not know, understand, recognise or take this principle seriously may be unpleasantly surprised by a crisis that reveals that they have been asleep at the wheel.

A political organisation can function successfully for a long time as long as its environment remains relatively stable and the demands placed upon it remain compatible with its original design. Problems arise when reality changes while the institutional structure is insufficiently adapted.

From this perspective, the present European situation can be interpreted as a tension between the original purpose of European integration and the tasks that are now expected of the European Union.

European cooperation was designed after 1945 to solve a specific historical problem: preventing new wars between European states through economic and political interdependence. That objective has been achieved to a significant extent. But the world in which the EU operates today places different demands upon it. Europe faces geopolitical shifts in power, military uncertainty, technological competition, climate challenges, migration and the need to protect democratic values.

These challenges require long-term strategy, rapid decision-making and clear political responsibility. It is precisely here that the tension with the existing system becomes apparent. Important decisions often depend on complex negotiations between national governments with divergent interests. This does not mean that cooperation between states is impossible or undesirable. It does mean, however, that there may be limits to a model in which an increasing number of common tasks are undertaken without a corresponding constitutional structure.

This is also where systems theory becomes relevant. Complex systems remain functional when they possess mechanisms capable of absorbing disturbances, correcting errors and adapting to changing circumstances. When such mechanisms are insufficient, tensions accumulate.

In political systems, this can lead to a situation in which increasingly more energy is required simply to maintain existing operations, while the capacity to solve fundamental problems declines. In the natural sciences, such a process is associated with the concept of ‘entropy’ under the Second Law of Thermodynamics: an increasing degree of disorder within a system when energy is no longer used effectively to maintain structure and coherence.

Although ‘entropy’ is a phenomenon originating in physics, its applicability to social systems has been endorsed by systems expert David

Easton and sociologist Niklas Luhmann, also known as the founder of radical general systems theory. In his 1957 article *An Approach to the Analysis of Political Systems*, Easton explicitly writes about a political system that may enter a 'state of entropy'. A system requires continuous inputs (energy) in order to continue functioning. Without inputs such as supports, demands, feedback and stress, the system cannot perform 'work'. These inputs must ensure that the system, whether physical or social, stores more energy than it consumes. A system must continue to absorb energy, information and resources in order to maintain its existence and functioning. When consumption exceeds what has been stored, deterioration occurs. After a subsequent identity crisis, a single incident may be sufficient to cause its collapse.

Luhmann does not use entropy as a synonym for deterioration, ageing or physical decay of a social system. His theory is much more focused on: complexity; uncertainty; contingency; communication; self-reference; and the continuous reproduction of the system. Ultimately, a social system does not consist of people in Luhmann's view, but of communication that produces further communication. A social system therefore maintains itself by continuously reproducing its own operations. Luhmann calls this *autopoiesis*. Where these aspects weaken, the system enters a state of decline.

In short, a social system continues to exist by continuously absorbing, processing and reinvesting resources/energy in its own maintenance and renewal. When this reproduction becomes insufficient, deterioration occurs.

Schematically: environment → inputs → processing → maintenance/renewal → survival versus: insufficient input/processing → increasing entropy → loss of organisation → deterioration.

In a number of my writings, including my latest book, *From the Darkness of Treaty-Based Cooperation to the Light of a Federal Europe* (2026), I explain:

- that every system has weak components that are susceptible to entropic deterioration;
- that the political and legal system of the European Union is full of systemic errors caused by the mixing of two systems, which, as a so-called positive feedback mechanism, further reinforce these systemic errors;
- that, as a result, the EU system is being hollowed out from within and has entered a state of decline—the approaching end of its political life cycle;
- that this decline becomes apparent through an identity crisis within the EU;
- after which an incident or a system war causes the EU to collapse.

According to this analysis, the European Union displays characteristics of such a process of increasing disorder. The number of rules, procedures and exceptions has grown considerably. At the same time, it remains difficult to reach common decisions on crucial issues. The result is that an increasing amount of institutional energy is devoted to maintaining and modifying the existing system, while less energy remains available for fundamental renewal.

There is also a democratic dimension to this problem. When citizens experience that important decisions are taken at European level, while the lines of political accountability are complex and difficult to understand, a distance develops between political institutions and society.

Democratic legitimacy requires not only formal elections, but also comprehensible structures in which citizens can see who is responsible, which powers exist and how those powers can be controlled. A federal

constitution seeks precisely to create such clarity. It makes visible where powers are located, which institutions are responsible and how the relationship between different levels of government is organised.

Federalism, therefore, is not a solution to every political problem. Federal states can also experience conflict, division and institutional dysfunction. The history of existing federations makes this clear. But a well-designed federal structure possesses institutional mechanisms for dealing with conflicts within a constitutional framework, provided that political leadership does not succumb to 'democratic backsliding'. This is the fundamental difference from a system in which conflicts ultimately have to be resolved again and again through negotiations between sovereign states.

The central question for Europe is therefore becoming increasingly clear: should the European Union continue to modify its existing treaty structure in the hope that it will eventually be able to perform the same functions as a federation, or should Europe recognise that a new constitutional phase has become necessary? And there is another question: who is capable of convincing the political leadership of the EU to begin preparing the constitutional transition now, before the citizens of Europe are unpleasantly surprised by the familiar expression: "When the shit hits the fan"?

From the perspective of Polybius, fundamental change is not an exception, but a component of political development. Systems that are no longer capable of adapting ultimately lose their stability. Yet a crisis can also be the moment in which new forms of organisation emerge. The present European challenge should therefore not be viewed solely as a threat, but also as an opportunity. The question is not only how the existing system can be preserved, but also which political order would be better suited to the future.

The debate therefore shifts from crisis management to state formation. The central question is no longer how Europe can repeatedly repair the existing model, but what institutional form is required to organise the European political community on a sustainable basis.

This brings us to the next part of the analysis: the role of democracy, constitutionalism and shared sovereignty in a future federal Europe.

14 Democratic Legitimacy and Shared Sovereignty as the Foundation of Federalism

The evolutionary character of the emergence, flourishing and decline of political systems must be recognised now that the European Union has unmistakably entered a period of decline. The end of its political life cycle is approaching. The transition towards a constitutionally founded federal Europe fits entirely within the evolutionary process whose characteristics were already identified by Polybius two hundred years BCE.

The preceding analysis of the historical development of political systems and of the tensions within complex organisations brings us to the core of the federal question: the relationship between power, legitimacy and responsibility. A political community cannot be assessed solely on the basis of its practical results. The question of what its authority is based upon is equally essential. Who exercises power? Where does that power come from? Who controls those who exercise it? And how can citizens influence decisions that directly affect their lives?

These questions lie at the heart of constitutional thinking. Their answer forms the foundation of the next evolutionary step.

Modern constitutionalism is based on the premise that political power cannot be unlimited. Power must be organised, distributed and controlled. Not because government would be impossible without power, but precisely because a sustainable political order can exist only when power is linked to responsibility.

A constitution therefore represents more than a legal document. It is the foundation upon which a political community organises its authority. A constitution does not merely define the powers of institutions; it also establishes the relationship between government and citizens.

In a democratic constitutional state, this means that institutions and office-holders are not ultimately the source of political legitimacy. The citizens are. This distinction is of fundamental importance for the future of Europe. The European Union possesses many characteristics of a political organisation: a parliament, a judicial structure, a common market, common policies and institutions with considerable powers. Yet its fundamental legal basis remains rooted in treaties between states.

This creates a particular situation. The EU exercises public powers that directly affect citizens, while its constitutional foundation differs from that of a federal state. A federation does not arise merely because states pool or combine powers. It arises when a new political community is constituted in which both the whole and its constituent parts derive their powers from the same constitutional source. This does not mean that existing states disappear. On the contrary: the federal principle is precisely based on preserving diversity within a common political order. Federalism is therefore not an opposition between unity and autonomy. It is a method of making both possible.

The United States provide a historical example. The American Constitution of 1787 emerged because the original Confederation proved insufficiently capable of addressing common problems. The thirteen former colonies retained their identities but recognised that certain interests could be protected only collectively.

Switzerland likewise developed in 1848 from a confederation into a federal state after it became apparent that the existing structure provided insufficient stability. The various cantons retained substantial autonomy but accepted a common constitutional order.

These examples demonstrate that federalisation is not necessarily a process of centralization. It is a process of constitutional organisation.

The central idea of federalism is shared sovereignty. This concept differs from the classical Westphalian idea that sovereignty is indivisible and exclusively connected to the nation-state.

Within a federal structure, sovereignty is distributed across different levels. Some powers belong to the federal level, while others belong to the constituent states or regions. This distribution is not based on political arbitrariness, but on constitutional arrangements that are legally protected.

The result is a system in which both the whole and its constituent parts retain autonomous authority.

This principle is closely connected to the thinking of Johannes Althusius, according to which political communities arise from below. People first organise themselves in smaller associations and subsequently create larger associations for interests that they cannot adequately pursue on their own. From this perspective, a federation is not an imposed form of government, but a form of organised cooperation in which different communities voluntarily create a higher level of common authority.

This particular aspect makes federalism highly relevant to Europe. European history is characterised by profound cultural, linguistic and historical diversity. A federal structure does not have to diminish these differences. On the contrary, it can provide a framework in which they are constitutionally protected.

Federalism therefore differs fundamentally from both nationalism and centralism. Nationalism often emphasizes the exclusivity of a single political community. Centralism seeks to manage differences by concentrating powers as far as possible at a single level.

Federalism, by contrast, seeks a constitutional balance: unity where common action is necessary, and autonomy where diversity remains

valuable and desirable. For Europe, this means that federal development should not be understood as the abolition of national identities, but as the creation of an additional political level through which common challenges can be addressed.

The question is therefore not whether Europe must choose between nation-states and a federation. The real question is whether nation-states can better protect their own interests within a common constitutional framework than by continuing to act separately in a world in which power relations are increasingly determined on a continental scale.

This also brings the importance of democratic participation into view. A federal European constitution would not merely have to regulate the relationship between European institutions and the member states; above all, it would have to strengthen the position of European citizens. Citizens would no longer participate in European decision-making solely through national governments but would become direct members of a constitutional European political community.

That requires more than institutional reform. It requires a change in political thinking. As long as federalisation is understood as a technical expansion of powers within the existing treaty framework, the fundamental question remains unanswered. Federalisation does not merely mean more cooperation; it means a different legal and democratic foundation for cooperation.

The transition to a federal Europe is therefore ultimately a constitutional task. It is not about creating a larger European bureaucracy, but about designing a political order in which power is limited, responsibility is visible and citizens constitute the ultimate source of authority.

From this perspective, the work of the Federal Alliance of European Federalists (FAEF) acquires particular significance. Its objective is not merely to advocate federalism as an ideal, but to address the concrete question of what a European federal constitution could look like. It is driven by a deeper question: can a continent that seeks to safeguard peace, security and shared prosperity continue to rely indefinitely on a system of treaties between states, or does the next stage of European development require a democratic constitutional federation? FAEF's answer is that monitoring organisations measuring public confidence in the EU system are finding that this confidence is declining; that it is therefore time to consider a new and better political system: a federal Europe. Federations do not create unity by denying differences, but by organising those differences constitutionally and therefore more effectively.

The debate therefore shifts from desirability to design. The central question is no longer merely, 'Should Europe federalise?', but also, and more importantly, 'How can Europe federalise in a democratically responsible manner?'

That makes it necessary to engage with the political and constitutional thought of Johannes Althusius.

15 The Thought of Johannes Althusius: The Foundation of Federal State Formation

The federal theory of Johannes Althusius (1563–1638) can be understood as a logical continuation of the evolutionary cyclical process of successive political systems recorded by Polybius. Evolutionary in the sense of: emergence > flourishing > decline > loss of identity > collapse > crisis > a new and improved system > and so forth. The emergence of a federal Europe fits perfectly within this centuries-old process of continuous improvement.

Althusius was a German jurist, political philosopher and administrator who is today regarded as one of the most important early thinkers on federalism, popular sovereignty and constitutional state formation. He lived in a period marked by religious conflicts, struggles for power

between princes and cities, the Dutch revolt against the tyranny of the Spanish ruler Philip II, and the rise of absolute monarchies.

The question, however, is whether Europe is sufficiently aware of the importance of the didactic triad: Learning > Understanding > Applying. Has Europe by now learned from the wisdom of Polybius and from the enormous number of misguided political decisions which, if understood in time, might have prevented or delayed the decline of political systems and the wars that followed? Does Europe now understand which constitutional and institutional mistakes must not be repeated? Will it finally apply what it has learned and should now understand? Is Europe genuinely seeking support in studying and applying the standards for federalization that are by now known?

In response to the political chaos, decay and decline of his time, Althusius developed a political theory that did not begin with the state or the ruler, but with human communities. This theory is known under its Latin title: *Politica methodice digesta, atque exemplis sacris et profanis illustrata*. Translated: *Politics, Methodically Set Forth and Illustrated with Sacred and Profane Examples*.⁶

According to Althusius, a political order does not arise because a ruler exercises power over subjects, but because people voluntarily associate with one another in different forms of cooperation: families, professional groups, cities, provinces and, ultimately, larger political communities. In contrast to the prevailing way of thinking, he reasoned not from the top down (centrifugal = from ruler to people), but in the opposite direction, from the people towards central authority (= centripetal). He therefore regarded the state as a system that emerges from a community of communities. Power does not, in his view, belong to rulers; it belongs to the organized community. Rulers merely receive a mandate to serve the common good.

The centripetal character of this approach incorporates the concept of hermeneutics and the so-called hermeneutic circle: the whole (the federal authority) is more than the sum of its parts (the member states of the federation). By contrast, centrifugal organization assumes that a whole already exists and that the central authority subsequently seeks to create or empower constituent parts through decentralization, while retaining the central power itself.

Althusius' *Politica* was first published in 1603 and expanded in 1614. In this work he developed ideas that would later become highly significant for federalism, subsidiarity, constitutional government and checks and balances. He also defended the principle that resistance to tyrannical government could, under certain constitutional conditions, be justified. For the Netherlands and Spain this has considerable political and historical significance. The revolt led by William of Orange, the ancestor of the present Dutch Royal House of Orange, against the Spanish ruler Philip II is legitimized in Althusius' *Politica* as justified resistance to tyranny.

Although Althusius remained relatively unknown for a long time, he is today regarded as a remarkably modern thinker, particularly because of his ideas about 'shared sovereignty' as a cornerstone of federal state formation — ideas that are of great importance in discussions about the future of Europe.

He was born in 1563 in Diedenshausen, in the then County of Nassau, in what is now Germany. He grew up in a Protestant-Calvinist environment during the turbulent period of the Reformation. His education began with studies in philosophy, theology and law. Among other institutions, he studied at the universities of Cologne and Basel, where he specialized in law and political theory. In Basel he received his doctorate in Roman law.

His academic career began at the Protestant Academy of Herborn, which at the time was an important centre of Calvinist and political thought. There he became professor of law and later rector of the academy. During this period, he developed his political theories, which would eventually culminate in his principal work, the *Politica*.

Althusius, however, was not exclusively an academic thinker. An important part of his career was spent in practical government. In 1604 he was appointed *Syndicus* — the chief legal and administrative adviser — of the East Frisian city of Emden, Germany. He held that position for more than thirty years, until his death in 1638.

His responsibilities as *Syndicus* were exceptionally broad:

- legal adviser to the city government and city council;
- defender of urban rights and privileges;
- diplomatic representative;
- drafter of legal documents;
- mediator in conflicts between the city and higher authorities.

In Emden he became involved in an ongoing struggle between urban autonomy on the one hand and the claims of princely authority on the other. This practical experience strengthened his conviction that political power must not be concentrated without limits. His career therefore represents a remarkable combination: scholar → rector → administrator → constitutional thinker.

He did not write his political theory merely as a philosopher working from abstract ideas, but also as someone who had spent decades dealing with concrete problems of government. This probably explains why his work remains so recognizable in a period of increasing political unrest and dissatisfaction.

Althusius sought to answer questions such as: "What is a just state?" and "How can a political community be constructed without falling into anarchy or absolutism?" But above all: "How do you organize a state in such a way that power remains controlled, and communities can live together sustainably?"

This was a revolutionary way of thinking, derived from a combination of theory and practice: society does not derive its form from the state; rather, society forms the state. Until that point in history, the ruler and his sovereignty had been regarded as primary and largely beyond criticism. His theory therefore represented a direct challenge to that of his contemporary, the philosopher Jean Bodin, who regarded the sovereignty of ruler and state as one and indivisible.

This makes Althusius particularly relevant to contemporary discussions about federalism and constitutional government. Let us examine this more closely.

The central concept in his theory is 'consociatio.' A federal system is built from the bottom upwards on layers of *consociationes* which, at the top of the system, encompass the central authority. But what is a *consociatio*? The element *con* refers to something done 'together', while *sociatio* conveys the idea of the social. Something like 'social togetherness.' It can be described as a group of people who exist together in a relationship of mutual dependence.

A *consociatio* can therefore be understood as a 'community' of smaller as well as larger groups of people. Althusius gives as examples the family, the profession or guild, religious and other cultural groups, the municipality, the province, the state and the confederation of states. The term *consociatio* could therefore be translated as 'community' at different levels of scale. In his view, a political system is constructed from the bottom upwards, in layers of communities operating at increasingly larger levels of scale.

⁶Althusius, Johannes, *Politica Methodice Digesta*, Liberty Fund, Indianapolis, 1995, Chapter XVIII and especially Chapter XXXVIII, §§67–90. More specifically: XXXVIII.70–72 (the duty of the Ephors); XXXVIII.81–86 (the removal of a tyrant); XVIII.108–117 (the position of the Ephors).

In short, Althusius sees the construction of a political order as follows: family as a sub-community → municipality as a sub-community → province as a sub-community → state as a federal community.

This is the hermeneutic circle of a political order in which the whole is more than the sum of its parts. The higher levels supplement what the lower levels cannot provide themselves and leave them otherwise undisturbed. They do not interfere with their internal autonomy but support it. In constitutional and institutional terms, this is reflected in concepts such as:

- *Subsidiarity*: allow those parts that are best placed to perform a task to perform it themselves.
- *Shared sovereignty*: the constituent parts do not transfer their powers to a higher level, but leave certain powers dormant so that the higher level can fulfil its responsibility to care for and support the lower level.
- *Autonomy at each level*: around 1900, the Dutch Prime Minister Abraham Kuyper, who was familiar with the teachings of Althusius, developed the concept of 'sovereignty in its own sphere.' This means that each level has and retains its own autonomy and sovereignty. It is not taken away from a lower level by a higher one.

This results in a conception of government in which the government understands that it is not the owner of power, but merely its custodian. This is a fundamental distinction. Political officeholders do not possess autonomous power; they receive a mandate from the people to protect and serve those people, uphold the law, and provide peace, security and prosperity.

In his attack on the concept of 'sovereignty as one and indivisible, vested in the person of the ruler', Althusius went even further in his unorthodox approach to sovereignty. If a ruler violates the law, harms the common good and exceeds his mandate, the people are entitled to resist. Not through armed revolt, but through institutional resistance.

To hold the state accountable under circumstances of non-violent conflict with tyranny, Althusius advocated the appointment of 'Ephors': representatives of the people charged with supervising, correcting and, if necessary, removing the leaders of the state. This can be understood as an early recognition that without concepts such as dualism, checks and balances and countervailing powers, the leadership of a state will tend to concentrate power, become oligarchic and corrupt, and ultimately lead the state towards collapse through a popular revolt — the very theme identified by Polybius.

Althusius thereby laid the foundations for the concept of a 'pluralistic constitutional community.'

The principal characteristics of Althusius' doctrine are therefore: communities as the foundation; shared sovereignty between the communities (the parts) and the federal authority (the whole); institutional control of power; the right to organized resistance; and the federal construction of political authority from the bottom upwards.

16 Conclusion: A New European Enlightenment

The development of political systems is not a static process. States and other political communities emerge, grow, reach a phase of stability, but may subsequently be confronted with tensions arising from their own institutional structure. History shows that political orders do not disappear solely because of external enemies or accidental events. Often, crisis arises from within, because a system is no longer capable of solving the problems for which it has itself become responsible.

The European Union finds itself at such a historical crossroads. This does not mean that European cooperation has failed. On the contrary,

European integration has made an exceptional contribution to peace, economic development and political reconciliation after centuries of conflict. It is precisely because of this historical success that the next question is so important: what institutional form is needed to protect these achievements in the future?

The central argument of this essay is that Europe ultimately faces a constitutional choice. A system of multilateral treaties has brought Europe a long way, but it also has structural limitations. It remains dependent on agreement between governments that ultimately place their own national interests above the common interests of EU citizens and, as a result, do not represent those citizens. When common challenges become greater and mutual interdependence increases, tension arises between the need for joint action and the institutional capacity to legitimize that action democratically.

A federal constitution offers a different approach. It does not create a new form of domination, but a constitutional ordering of shared sovereignty. It makes clear which powers are exercised jointly and which powers remain with the constituent parts. It combines political effectiveness with democratic control. That is the essence of federalism.

Federalism is therefore not primarily a geographical or administrative construct. It is a way of thinking about politics. It begins with the insight that people and communities need both autonomy and connectedness. Individuals belong to families, families to local communities, and local communities to larger political associations. Each level has its own significance and responsibility.

In this respect, modern federalism is closely connected to the insights of Johannes Althusius, who more than four centuries ago already argued that political order is not imposed exclusively from above, but built from below by interconnected communities. His thinking contains an enduring warning to every political order in which power becomes detached from society. A sustainable state is not merely an administrative apparatus. It is a constitutional relationship between citizens, communities and those who exercise public office.

The lessons of Polybius also remain relevant. His theory of the evolutionary political cycle demonstrates that no form of government automatically continues to function forever. Every political order contains the possibility of decline when its original principles are forgotten, and its institutions no longer correspond to the reality for which they were designed. Yet within inevitable decline lies the seed of a new and better order.

The task facing Europe is therefore not merely institutional, but also intellectual and moral. A new European phase requires leadership willing to think beyond existing categories. No longer merely to operate within the framework of treaties, procedures and national interests, but to ask what political order is necessary for future generations.

This calls for a new period of Enlightenment. Not an Enlightenment in the historical sense of the eighteenth century, in which religious and scientific authorities in particular were subjected to critical examination, but a new constitutional Enlightenment in which societies once again learn to reflect on the foundations of their political organization.

The central questions can be formulated simply:

- Who is the source of political power?
- How is power constrained?
- How are citizens protected?
- How are common interests served without destroying the freedom and distinctiveness of communities?

A democratic federation provides a different answer to these questions than a treaty-based organization. It places citizens, rather

than governments, at the centre. It regards states not as competitors, but as constituent parts of a larger constitutional order. It understands sovereignty not as property belonging exclusively to individual states, but as a responsibility that can be exercised at different levels — the concept of shared sovereignty.

This does not mean that the path towards a federal Europe will be easy. Every fundamental political transformation generates uncertainty and resistance. Interests connected to existing structures will defend themselves. Political leaders will have to recognize that change is not merely a technical question, but also a question of vision, knowledge, understanding and responsibility.

But postponement does nothing to alter the underlying development. Europe is confronted with circumstances in which the limits of national solutions are becoming increasingly clear. Security, the economy, technology, energy, climate, migration and international power relations transcend national borders. The world in which Europe operates requires a political capacity that goes beyond separate agreements between states. Europe must take account of the insight: 'Where there is a will, there is no border.'

The choice, therefore, is ultimately not between preservation and change. The real choice is between a controlled constitutional transformation and a chaotic adaptation under the pressure of crises.

History gives Europe the opportunity to learn from earlier examples. The United States, Switzerland, Germany, Austria and other federal states did not emerge because all problems had disappeared, but because political communities decided to create a new institutional solution for problems that existing structures were no longer capable of solving.

Europe today possesses more knowledge about federalism than ever before. The constitutional principles are known. The historical examples are available. The institutional models exist. The question is therefore not whether a federal order can be conceived. The question is whether Europe is willing to take the step.

Such a step begins not with centralist power politics, but with understanding. Not with centralization, but with constitutional clarity. Not with reducing diversity, but with organizing it.

But the latest proposal to that effect has already been put forward. On 23 January 2026, Chancellor Friedrich Merz and Prime Minister Giorgia Meloni signed an extensive cooperation plan in Rome during German-Italian intergovernmental consultations, covering defence, security, migration and economic competitiveness. At the joint press conference, Merz spoke of a 'united Europe' and of the need to make Europe more capable of acting decisively.

On 12 February 2026, Germany and Italy presented joint proposals in Brussels, during the EU summit on competitiveness, aimed at strengthening European competitiveness through regulatory simplification, reinforcement of the internal market and more intensive cooperation.

Here too, the emphasis was on practical reforms within the treaty framework, rather than on a formal call for a federal European state. Once again, the approach was to rearrange shared competences where necessary, followed only afterwards by possible institutional deepening.

The media described these two initiatives by Germany and Italy as proposals for a more pragmatic form of cooperation between the member states. To be achieved through yet another far-reaching amendment of the treaties. Well, attempting to pragmatically modify an already highly complex political system will, by requiring energy that has already been exhausted, only accelerate the further erosion of the EU's capacity to act.

That is why I return once again to the three words: Learn > Understand > Apply.

Learn from history that political systems have a life cycle and that every generation has a responsibility to respond in time to structural change.

Understand that a political community seeking to address common challenges ultimately requires a form of common authority that is democratically legitimized and constitutionally constrained.

Apply what science, history, political philosophy and legal philosophy teach us: that a sustainable Europe cannot be built on endless adjustments to treaties, but on a democratic constitution whose legitimacy derives from the citizens of Europe.

The future of Europe therefore lies neither in the past of conflicting states nor in the present of an increasingly complex treaty system. It lies in the capacity to create a new political order. An order in which peace, security and prosperity do not depend exclusively on temporary agreements between governments but are supported by a constitutional foundation. A federal Europe. Not as the end of European diversity, but as its political fulfilment. Not as a replacement for national communities, but as their common future. Not as a project of governments for citizens, but as a constitutional community of citizens, for citizens and by citizens.

Well, as of 2026, thousands of European citizens are members of private organisations that all strive for a federal Europe. Some remain committed to the multilateral, treaty-based system, believing that amendments to the treaties will ultimately lead to a constitutionally based federation; others pursue a federal Europe based on a democratic federal constitution.

If these organisations understand the sense of urgency, they need to take just one step: to upgrade their individual entities by jointly—centripetally—establishing a private federal organisation, with at least the following as members: the Federal Alliance of European Federalists (FAEF), the Union of European Federalists (UEF), Young European Federalists (JEF), Federal Union (FU), VOLT Europa, Più Europa, DiEM25, and Red Tulips for the United States of Europe.

As is the case in a well-constructed federation, each member organisation remains sovereign in its own domain. The new federation, resulting from the upgrading of these organisations, would be sovereign with regard to one common interest: working together towards a constitutional federal Europe.

Such a citizens' initiative would be a unique step in the evolution of federalism since the federal doctrine of Johannes Althusius in 1603, its first application through the establishment of the United States in 1787, and the creation of a citizen-driven federal Switzerland in 1848.

If the aforementioned private organisations understand the need for this upgrading, their federal expertise, together with the determination of their thousands of individual members, could serve as the driving force behind the ratification of a democratic federal Europe of, by, and for its citizens.

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