The Idea of Subsidiarity in the European Federalist Thought

(A historical survey)

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Content

Abstract

The Draft Treaty Establishing a Constitution for Europe, 2003 (Internet, 2005: http://europa.eu.int/eur-lex/en/treaties/dat/constit.html) defines subsidiarity as follows:

"The Union is established reflecting the will of the citizens and States of Europe to build a common future. For this purpose the Member States confer competences on the European Union. The Union shall coordinate the common policy." (Title I. Article 1.1)

"The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principle of subsidiarity and proportionality." (Title III. Article 9.1)

"Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level." (Title III Article 9.3) "The Union's institutions shall apply the principle of subsidiarity as laid down in the Protocol. The Protocol emphasised the necessity of the cooperation between the Commission and the national Parliaments. The Parliaments of the Member States could decide the compliance of the Commission's decision with the principle of subsidiarity."

This definition of subsidiarity has a long historical development. In the Latin vocabulary the word subsidium or subsidiaries initially meant something in reserve or, more specifically, reserve troops: troops used in the case of necessity. Later it acquired the broader sense of assistance or aid. Later it was used as the principle of autonomy in social organization. It referred to the role of the authority in general, not only the authority of the state (Millon-Delsol 1992: 6). From the 16th century subsidiarity developed in opposition to sovereignty and, in practice, it served as the rational distribution of competences in all sphere of the social organization of the state. In our days it became the principle of distribution of powers and competences in interstate relationships.

The definition of the idea of subsidiarity as the legal principle of the EU is very controversial (Endo 2001; Estella 2002; Millon-Delsol 1992; Merten 1993; Subsidiarity 1991; Making Sense of Subsidiarity 1993). It is not clear whether this principle is an integrationist or anti-integrationist principle of EU policy. The purpose of this paper is to present the historical development of the idea of subsidiarity in the democratic, European thought with the goal of clarifying its role in the internal and external organization of states, and in the development of the democratic international law.

1.   The idea of subsidiarity in the development of the classical idea of World federation and of international law

The idea of subsidiarity has a long history. It can be traced back to Aristotle who drew up an organic model in which individuals (persons) belonged to groups and groups formed the organs of the larger social body. Each group's autonomy had to be respected. The personal principle and subsidiarity were strongly connected in the mind of Aristotle, and they developed side by side with the concept of federal states. In fact, even the classical idea on world federalism started with Aristotle:

"Observations show us, first, that every polis (or state) is a species of association, and, secondly, that all associations are instituted for the purpose of attaining some good. … The first result of these two elementary associations is the household or family. The next form of association – which is also the first to be formed from more households than one, and for the satisfaction of something more than daily recurrent needs – is the village. … When we come to the perfect and final association, formed of a number of villages, we have already reached the polis – an association, which may be said to have reached the height of full self-sufficiency. … Because it is the completion of associations existing by nature, every polis exists by nature, having itself the same quality as the earlier associations from which it grew. … The polis exists by nature and it is prior to the individual. … The polis is a whole, and individuals are simply its parts … depending on the whole … Man is thus intended by nature to be a part of a political whole" (Aristotle 1946:1).

The concept of Aristotle was based on the rule of law, in which constitution played an important part. The best constitution is the polity based on the middle class. A polity is a mixture of democracy and oligarchy, which inclines more towards democracy. The term polity is usable only for constitutions that recognize the two elements of free birth and wealth.

Saint Thomas Aquinas connected subsidiarity with the notion of human dignity. For him it meant the recognition of a sphere of freedom for the individual that must be respected by larger social groups, and the state. For Aquinas the intervention of public authorities was legitimate in so far as it was necessary for the attainment of society's common good. The limit of the exercise of power was found precisely in the respect of human dignity (Estella 2002: 77).

In parallel with the rise of the modern state in the 16th and early 17th centuries the concept of sovereignty emerged as an instrument for the organization of state power. At the time the definition of sovereignty became the most important subject of political debates. Two influential thinkers interpreted sovereignty differently: Bodin and Althusius. And the dichotomy of sovereignty versus autonomy (subsidiarity) was born.

Jean Bodin described sovereignty as the embodiment of centralization policy in his "Les six livres de la République", published in 1576. His work became the classic rationalization of the unitary monarchical state: the authority of the state should be absolute, centralised, and indivisible. The supreme sovereign power should reside in a Monarch answerable only to God and to natural law. In his words: "If justice is the end of the law, the law the work of the prince, and the prince the image of God, it follows of necessity that the law of the prince should be modelled on the law of God" (Bodin 1955: 25-35). He called for the establishment of centralised states where all powers were embodied by a divinely ordained king at the top of the power pyramid or in a sovereign centre. His conception was extremely rigid. It was a single basic pyramid of command and obedience.

In opposition to Bodin, Althusius called for the creation of decentralised federal states and of a federal international policy. He was a German Calvinist intellectual and political magistrate. He emerged from the reformist tradition, and built his political philosophy based upon the covenant theology in his Politica Methodice Digesta, written in 1603. Althusius declared, in opposition to Bodin:

"Bodin disagrees with our judgment by which supreme power is attributed to the realm or universal association. He says that the right of sovereignty, which we have called the right of the realm, is a supreme and perpetual power limited neither by law (lex) nor by time. I recognize neither of these two attributes of the right of sovereignty, in the sense Bodin intends them, as genuine. For this right of sovereignty is not the supreme power; neither is it perpetual or above law. It is not supreme because all human power acknowledges divine and natural law (lex divina et naturalis) as superior. … Indeed, an absolute and supreme power standing above all laws is called tyrannical. … Augustine says, 'when justice is taken away, what are realms except great bands of robbers'. … But by no means can this supreme power be attributed to a king or optimates, as Bodin most ardently endeavours to defend. Rather it is to be attributed rightfully only to the body of a universal association, namely, to a commonwealth or realm, and as belonging to it" (Althusius 1965: 66-67).

For Althusius the supreme magistrate is the one "who, having been constituted according to the laws (leges) of the universal association for its welfare and utility, administers its rights (jura) and commands compliance with them. Although the rights of the universal association belong to the body of the universal association, or to the members of the realm, by reason of ownership and proprietorship, they also relate to its supreme magistrate to whom they have been entrusted by the body of the commonwealth by reason of administration and exercise. … The magistrate is called supreme because he exercises not his own power, but that of another, namely the supreme power of the realm of which he is the minister. … Moreover, he is called supreme in relation to individuals. But he

is not supreme in relation to his subjects collectively, nor to law, to which he is himself subject" (Althusius, 1965: 115).

The conception of Althusius is based on a political organization ranging from private associations composed of small groups, families, and voluntary corporations to public associations and territorial units such as the local community, the province, the canton, and later (by implication) the state. His was an organic notion of society in which the integrity of the component parts was guaranteed by being built up from below. It started with the persons who established public associations:

"The public association exists when many private associations are linked together for the purpose of establishing an inclusive political order (politeuma). It can be called a community (universitas), an associated body, or the pre-eminent political association. It is permitted and approved by the law of nations (jus gentium). …. The community is an association formed by fixed laws and composed of many families and collegia living in the same place. It is elsewhere called a city (civitas) in the broadest sense, or a body of many and diverse associations" (Althusius, 1965: 34-35).

These public associations create universal and major public associations: "In this association many cities and provinces obligate themselves to hold, organize, use, and defend, through their common energies and expenditures, the right of the realm (jus regni) in the mutual communication of things and cervices" (Althusius, 1965: 61).

The universal and major public associations create confederal associations: "The augmentation and extension of the goods of the associated body is accomplished through confederation or association with others, or through other legitimate means and titles. In such a confederation other realms, provinces, cities, villages, or towns are received into and associated with the communion and society of the one body. By their admission, the body of the universal association is extended, and made stronger and more secure. This cannot be done, however, without the consent and authority of the body and its administrators. … Such confederation with a foreign people or another body is either complete or partial.

A complete confederation is one in which a foreign realm, province, or any other universal association, together with its inhabitants, are fully and integrally co-opted and admitted into the right and communion of the realm by a communicating of its fundamental laws and right of sovereignty. To the extent that they coalesce and are united into one and the same body they become members of that one and same body. …

A partial confederation is one in which various realms or provinces, while reserving their rights of sovereignty, solemnly obligate themselves one to the other by a treaty or covenant made preferably for a fixed period of time. Such a partial confederation is for the purpose of conducting mutual defence

against enemies, for extending trust and cultivating peace and friendship among themselves, and for holding common friends and enemies, with a sharing of expenses" (Althusius 1965: 84-85).

Althusius continued the thoughts of Augustinus. He also benefited from the experiences of the Dutch confederation, whose ruling principles were laid down in the Treaty of Utrecht (1579) (Kossman 1974: 165-173). This can be regarded as the first successful federalist model based on the principle of unity but also safeguarding the autonomy of the parts. For Althusius this was a proof that federalism emerged in history as a political order that sought to accommodate a great number of societies without destroying them; federalism was based on the principle of autonomy.

However, with a few exceptions, it was not the Althusian federalism but rather the Bodinian sovereign monarchical nation state that triumphed in Europe. Most of the national states drew their origins in authoritarian sovereign states. The international relations of authoritarian states remained unregulated.

The federalist opposition to the absolute sovereign state model was in favour of decentralised states pursuing peaceful internal and external association policies, and based on international law. The culminating period for this international and legal political thinking began in the 17th century. It continued during the Enlightenment of the 18th century. Throughout this period the driving force of European development was the emergence of the capitalist economic system and of a new civil society. A conscious fight against the feudal privileges, the prejudices, and against the feudal methods of foreign policy and diplomacy was at the centre of the concerns and activities of political thinkers of this period. Eliminating wars was the most important challenge. The real interests of the capitalist economy and of commercial enterprises demanded peace.

Grotius was the first to elaborate on a legal framework for making wars impossible. He believed that states should be organized based on common legal principles, and he also proposed to do the same for the community of states. He developed his ideas on a "jus gentium", or law of nation (Grotius 1814). In his "De jure belli ac pacis", he laid the foundations of international law.

While some thinkers concentrated on Europe only, others also considered the whole World. The famous Czech thinker, Comenius, is a good example. He wanted to federate the whole World through peace and education. He proposed to organize a World Peace Conference with the participation of the representatives of each nation of the World (Comenius 1702: 78-88). To unify the World in peace as a result of an agreement among the representatives of the peoples was an important idea, although obviously quite an utopian one.

Political thinkers who concentrated on the modernization of the monarchic national states, and who proposed ideas of some sort of a European union, appeared to be more realistic. Locke, for example, concentrated on the development of a civil state in his Treaties on Civil Government (Locke 1967). He

was in favour of the rights of man, of a representative parliamentary government, and of a federal union of states. He started to discredit the conservative concept of monarchical sovereignty, and contributed to the emergence of the constitutional monarchy concept.

Sully and Saint-Pierre, who can be regarded as the forefathers of a European union, dealt with a policy on European unity. In his famous Great Project, Sully proposed to divide Europe into 15 equal national states (Sully 1837: 418-441). He was the first who favoured the linguistic, cultural principle as a means to reorganize European regions. In contrast, Saint-Pierre proposed to reconstruct Europe based on a contemporary status quo. He also advocated laying dawn the new principles of the European federation and its institutions in a European constitution (Saint-Pierre 1713; Slochauer 1953 86-99). Another thinker, William Penn, strongly criticized the principles and the territorial incorporation policies of the monarchic diplomacies; he was the first to propose a policy of armament limitation. He put forward the idea of a peace policy to replace military policy: peace policy meant an association policy among states based on legal agreements and morality (Penn 1983). All these thinkers had proposals to create common institutions, too, like a European council of rulers, a European assembly of the representatives of the member states, or a court of justice.

The thinkers of the Enlightenment, representing natural law and social contracts, dealt with the very essence of sovereign power and elaborated on the idea of a representative government, the division and balance of the legislative, the executive, and the judicial power. Montesquieu, for example, clearly rejected all imperial tendencies for unifying Europe, which were expressed in the idea of a "universal monarchy" (Montesquieu 1955). He favoured a system of a "république fédérale", i.e., a European federation composed of republican states (Montesquieu 1979: 265).

The most important thinkers of the law of nations (international law), Suarez and Vattel, elaborated on social organizational ideas based on the principle of "unity in diversity". They dealt with the necessity to divide the religious and the civil social organization ideas, and to regard social organization as the product of the practical social organization work of persons. Suarez emphasised the necessity of establishing legal rules on the cooperation of states. The peaceful World state – as a unity in diversity – has to be based on the harmony of the principles of the law of nations (ius gentium) (Suarez 1965: 13, 67).

Vattel, Montesquieu's contemporary, emphasised that the nations or states ("les nations ou états") are free, independent, and equal from nature, just like persons. While the originally free persons (citizens) had to subordinate their rights to the sovereign, the nations or states remained free, independent, and equal in their relationships. However, the states have to be organized by internal and external rules. Thus, autonomous states have to accept common rights and duties laid down in the treaties on the law of nations (ius gentium) in their international behaviour. The ius gentium originated

from the practice of social organization, and it belonged partly to natural law, too, because from nature all states or nations were equal and free (autonomous) (Vattel 1775: 1-9). Vattel differentiated the human rights from the law of nations. Human rights were natural rights for him, because from nature everybody was equal. Consequently, human rights were natural rights with a universal character.

In Vattel's worldview the international or interstate system was composed of single states. A single state constituted one political body, which was sovereign. The sovereign states could create either federations (république fédérative) or they could remain autocratic states. In the case of a federal republic the sovereign states unite into a permanent confederation. They agree in common competences and obligations, but they safeguard their autonomy. As examples Vattel mentioned the unions among the Grecian states, the union of the provinces of the Netherlands, and the union of the Swiss cantons.

The opposite of the "république fédérative" was the autocratic, centralised state. The international relations of these states were characterised by expansion and subjection. As an example he mentioned the Roman Empire where the autonomous parts were directed from a centre. The autocratic sovereign states did not accept any law of nations that dealt with the regulation of the rights and duties of the sovereign states in their international relations. They safeguarded their sovereignty in international policy, and did not want to subordinate it to the law of nations (Vattel 1775: 13-14).

As a conclusion Vattel – without using the term subsidiarity – could be regarded as the first person with an interpretation of the essence of the principle of subsidiarity in the history of international law.

2. Subsidiarity in the American and Swiss federalism and in the French nation state

The old European society, which was still dominated by the power fight among various influential groups of leading autocratic and centralised national states and national empires, was not able to realise any federalist ideas or practices, and to establish a European "federal republic". Nevertheless, there were some states in Europe (e.g., the Dutch confederation or the Swiss confederation) that could develop and implement federal rules. Emigrant European settlers in North America used these, as well as the European federalist ideas, as examples; they proved that the state and the federation of states could be the result of an agreement among concerned citizens. The Virginia Bill of Rights (Virginian constitution) was created in this spirit in 1776 (Dumbauld 1957: 170-172). It also represented the first legal formulation of ideas on human rights. It declared 1. "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing, and obtaining happiness and safety". 2. "That all power is vested in, and consequently derived from the people; that magistrates are

their trustees and servants", and 3. "That government is, or ought to be instituted for the common benefit, protection and security of the people, nation or community … " and that when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable and indefeasible right to reform, alter or abolish it in such manner as shall be judged most conductive to the public weal" (Verzijl 1958: 35-360). The Virginia Bill of Rights represented an important step in the legal formulation of certain fundamental rights of every human being, rights that were inviolable by their rulers. It had an important influence on the Declaration of the Independence of 1776, on the Constitutions of the United States of America of 1787, and on the Declaration of the Rights of Man and of the Citizen of 1789. The original formulations have gradually been assimilated into the Constitutions of many other states. They have also become, gradually, integral part of modern public law governing the basic legal protection of the individual against violation of his inherent rights and his freedoms by the state and his fellows (Verzijl 1958: 7).

When the English king violated the rights of the American colonial states, these revolted in the name of the defence of their autonomous rights and communities: they declared their independence and founded a new society (Hunt – Brown 1920). The great debate that took place among 55 people in Philadelphia, and which led to the American Constitution in 1787, was influenced by the principle of subsidiarity. Breaking with European feudalism, the representatives of the States consciously discussed, and implemented the alternative federalist European ideas in the new constitution of the United States of America. American politicians, influenced by the Dutch Treaty of Utrecht and by the ideas of Locke, Penn, Saint-Pierre, Montesquieu, Vattel and others, developed and implemented in practice the ideas of a federation composed of sovereign states (Hamilton – Jay – Madison 1965). They went even further by including the idea of popular sovereignty and a federal and national self-determination concurrently. Each American became the member of the federation as American but, at the same time, they were also members of their own autonomous states. They agreed in a common defence policy, and a commercial, economic, monetary, social, cultural, scientific, and judicial cooperation in the Congress. But the powers not delegated to the United States remained by the States: „The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (Mitchell 1995: 203).

The most important lesson for Europeans was that a democratic federation among the states was indeed possible as an expression of their own initiative and of the act of the persons. The American politicians even proposed to their European counterparts to establish the European United States as soon as possible (Hunt - Brown 1920: 1). However, Europe, which was characterized by a history of permanent rivalry and war among power thirsty rulers, and where the phenomenon of absolute monarchy could develop, was not able to create a federal agreement at that time.

Nevertheless, the creation of the United States of America had a great influence in Europe. The French Revolution in 1789 abolished feudalism, too, and declared the principles of a new European civil society in the Declaration of the Rights of Man and of the Citizen. These principles were rooted in the Enlightenment. The Declaration of the Rights of Man and of the Citizen, in 1789, had a general European value. The French revolutionaries regarded themselves as initiators of a European union of states based on the common democratic principles of a European law. However, France had been forcefully united during history by its monarchs, and the French revolutionaries did not establish a federalist state either. The new French state was a unitary "one national" state. It was the product of the self-determination of the French people embodying the nation: the nation became the sovereign. The term "nation", however, meant to denote the French people (Fauré 1988: 11). Understandably, the interpretation of the third article of the declaration caused problems for the politicians of other European multinational states.

In Europe, only the Swiss cantons succeeded in continuing the American federalist example. The Swiss Constitution of 1848 laid down that the Swiss cantons conferred competences to the federal power, but they remained sovereign in all other things:

„Die Kantone sind souverän, soweit ihre Souveränität nicht durch die Bundesverfassung beschränkt ist, und üben als solche alle Rechte aus, welche nicht der Bundesgewalt übertragen sind" (Kaiser - Strickler 1901: 272).

Influenced by the American Constitution, these important events in Europe can be regarded as valuable contributions to the ideas and to the principles of a democratic state organization and international law. The new principles of the civil constitutional state were based on the ideas of personalism and subsidiarity: popular sovereignty, self-determination, representative parliamentary system, pluralism, equal political rights and duties, basic human rights and duties, division and balance of the legal, executive and judicial power, federal institutions. European culture, also influenced by the American, was able to change a social system based on feudal privileges to a new social system, based on the idea of popular sovereignty, self-determination, equal political and human rights and on a democratic parliamentary representative system.

Whilst the new common principles of a European state organization, which were declared in the Declaration of the Rights of Man and of the Citizen (Hunt 1996), had a great influence in Europe, it took a long time to implement these principles in a European state organization. Among the many reasons for this failure perhaps the most important one is the unsuccessfulness of the French Revolution. It failed due to the strength of earlier French absolutism and of the European conservative forces; due to the bloody leftist terror, which created fear everywhere; due to the centralization policy

of the unitary nation state that destroyed pluralism and federalism; and, finally, due to the aggressiveness of Napoleon who wanted to unify Europe by using force under the principles of his Civil Code. The failure of the Revolution led to the conviction that it would be safer to accomplish democratic reforms and modernization within the framework of independent nation states. As a result of the unsuccessful federalisation of Europe, the old conservative monarchical and feudal forces remained active and fought their fight with the representatives of a new civil society during the 19th century.

In the spirit of their traditions, European thinkers began to search for the reasons for the French Revolution's failure and its goal of establishing a European federation. They realized that, as federalism failed in Europe, people would instinctively concentrate on the internal modernization of nation states. They thought that federalism depended on democracy within individual states, though they did not forget about the necessity of an external coordination of European states, either. One of the best-known representatives of this idea was Kant. The essence of Kant's thoughts was to create a federation of republics. In his essay (Kant 1984) he proposed to achieve eternal peace under the ideological leadership of the most successful states. He believed that the most developed states would become the centres of a European federation. Kant actually raised the problem of the harmony of the constituent parts within the whole. He showed that the basic problem of a European federation is how to create legal harmony among different nation states that did not really want to give up their own sovereignties. As a solution, he favoured the emergence of a law of nations (international law) and of a law of world citizens (human rights). He was in favour of the implementation and of the legal harmonization of common principles within the framework of a law of nations, and of civil and human rights in each sovereign nation state. He also emphasized the necessity to coordinate the co-operation among sovereign nation states through international law. His most important achievement was a draft for an internal and external legal harmonization of a nation state system.

3. Federalists contra nationalists in the 19th century

The 19th century became the century of nation states and of nationalism in Europe. While democratic reformers fought for a consistent implementation of democratic reforms within states, there was no effective internal and external legal harmonization among states. The conservative Saint-Alliance could not become the coordinator of legal harmonization. The methods of monarchic diplomacies, of expansion, of the interests of sovereign nation states, and the strive for a balance of power dominated. Although the aim of the conservative monarchs to restore the old European society proved to be impossible, the conservative forces could still hinder and paralyse the development of the necessary democratic reforms. Nevertheless, the fight in the name of a European unity continued.

European federalists strongly criticized the competition among nation states and national empires that, in the lack of an international coordination, turned them into enemies. The lack of democracy made this phenomenon especially dangerous. People developed mutually negative images and stereotypes about each other, which led to feelings of animosities and fears. It is on this psychological basis that the phenomenon of nationalism could develop.

For the supporters of the democratic European idea it was clear that democracy and federalism was the only solution to these problems. Thus, the plans of a European unity continued to develop. Saint-Simon, for example, drafted the idea of a parliamentary Europe headed by a European parliament (Saint-Simon 1979). The democratic nationalist, Mazzini, put forward the idea of a New Europe composed of renewed unitary nation states, among others a New France, a New Italy, and New Germany. He concentrated on the modernization and on the necessary centralization within nation states and rejected the federalist ideas (Mazzini 1912: 51-60). In opposition to Mazzini, Proudhon fought for the consistent implementation of a decentralized association policy of a federative type, based on the idea of personalism and subsidiarity. He was opposed to the powerful centralization policy of nation states. He believed that centralized, monarchical or civil nation states were not able to organize a European federation. He therefore supported decentralisation, the local autonomy system, and regionalism (Proudhon 1959: 543-551). Lord Acton rejected nationalism in general – including Mazzini's nationalism, too – and fought for an autonomous, decentralized development of the multinational constitutional states on basis of the status quo (Kohn 1971: 122-125). Bakunin's polemics with Marx and Mazzini indicated the presence of two impasses on the way of free and federal social organization, namely authoritarian communism and nationalism (sovinism) of the authoritarian nation states (Bakounine 1961: 189-191; Bakounine 1959: 1-60).

Proudhon is probably best known as the representative of personalist federalism. His major work on this subject, published in 1863, was "Du principe fédératif". In this work he concentrated on the dichotomy of authority and liberty. Proudhon put forward a model of state and society composed of autonomous communities, which federated on basis of contracts freely entered into. His conception of the state-society relationship was an organic view based upon corporatism (associations) and subsidiarity. He believed that power should be divided in order to be as close as possible to the level of the problems to be solved.

He defined federation as follows:

"Fédération, du latin foedus, genitive fœderis, c'est-à-dire pacte, contrat, traité, convention, alliance, etc., est une convention par laquelle un ou plusieurs chefs de famille, une ou plusieurs communes, un ou plusieurs groupes de communes ou États, s'obligent réciproquement et également les

uns envers les outres pour un ou plusieurs objets particuliers, dont la charge incombe spécialement alors et exclusivement aux délégués de la fédération' (Proudhon 1921 : 104).

Proudhon's personalist federalism was based on the recognition of society as a multi-layered entity. At the bottom it is based on the individual and was built up from bottom up via families, groups, economic units and local communities, and extended even beyond the state into an all-embracing transnational federation. Human beings were complete persons in the sense that their liberty and autonomy were achieved through their responsible interaction with the other humans.

In his federalist system subsidiarity played the conflict-solving role. It attributed the competences among the different parts of the federation, and between the federal government and the member states by safeguarding all kind of autonomous rights. In his words:

"Un contrat synallagmatique et commutatif, pour un ou plusieurs objets déterminés, mais dont la condition essentielle est que les contractants se réservent toujours une part de souveraineté et d'action plus grande que celle qu'ils abandonnent"(Proudhon 1921 : 112).

The whole structure was built from bottom-up, based on legal harmonization with the federal law. Sovereignty and centralisation policy – the former sources of conflicts and wars – could not play any role in the Proudhonian social organization.

John Stuart Mill emphasised the importance of the autonomy of local governments. He was against the centralization policy of central authorities: "It is but a small portion of the public business of a country which can be well done, or safely attempted, by the central authorities" (Mill 1968: 346). Mill appreciated the federal government. He regarded the Federalist, a collection of papers, as a more instructive treatise on federal government (Mill 1968: 369).

Regarding the Federal Union, Mill emphasised two ways of organization: "The federal authorities may represent the Governments solely, and their acts may be obligatory only on the Governments as such; or they may have the power of enacting laws and issuing orders which are binding directly on individual citizens" (Mill 1968: 368). The former is represented by the German so-called Confederation. The other principle is that of the existing Constitution of the United States, also adopted by the Swiss Confederacy. The Federal Congress of the American Union is a substantive part of the government of every individual state. It makes laws, which are obeyed by every citizen individually, executes them through its own officers, and enforces them by its own tribunals. It is the only principle that has been found to produce an effective federal government. A union between the governments only is a mere alliance (Mill 1968 368).

4. The idea of the democratic multinational federalist state in Central Europe

Searching the legal means against nationalism after the bloody nationalist fight in 1849, Central European thinkers elaborated important federalist ideas in opposition to the idea of sovereign nation states. Personal principle and subsidiarity played a significant role in this. The most important among these were Eötvös, Renner, Naumann, and R. Coudenhove-Kalergi. Their contributions to the development of democratic federal European idea and of human rights are indeed very important, primarily in the area of national minority rights (Bóka 1999 435-473, Bóka 2005 7-24; Bóka 2001 132-142, 241-282; Bóka: 2002).

The Hungarian József Eötvös was, for example, deeply shocked by the bloody nationality conflict of Hungary in 1848-49. He made very serious attempts to understand the reasons and to find solutions to the national and national minority problems (Bóka 2005 12-14). He began by studying the influence of the dominant European ideas of the 19th century "freedom, equality, fraternity" on state organization (Eötvös 1851). Before 1849 Eötvös believed that if each citizen of the Hungarian Kingdom had equal political and human rights and duties within a representative parliamentary system then, eventually, the national and national minority claims would be solved automatically. Consequently, it would be necessary to implement all the democratic reforms proclaimed during the uprising in 1848. The aim of these reforms was to harmonize the principles of the Hungarian state organization with the principles of the Declaration of the Right of Man and of the Citizen of 1789.

After the lost battle of 1849, Eötvös consistently rejected the idea of copying the example of the French unitary and centralized nation state. He thought that in multinational states only federalism, based on the personal principle, i.e. „personalist federalism", could be accepted as state organizational idea. His goal was to understand the reasons for the emergence of the national and linguistic minority "question" and to find a democratic solution to the problem (Eötvös 1902-1903). He began to study the history of the organization of states. While doing this he found parallels between the general problem of religious minority groups and of national minority groups in larger, multi-religious and multinational states. He searched through the history of religious movements; he indeed considered the national and linguistic minority problem to be, similarly to religion, primarily a social issue. Comparing religious autonomy and religious freedom, he emphasized that religious autonomy could not solve the problem of minority religious groups. Instead, the real solution was the separation of state and religion. Once this is done, the political organizations of the citizens would become independent from the religious ones. Eötvös' most important idea was to draw on this conclusion, and to propose a separation between the civil political and the linguistic/cultural functions of the state. As a solution he proposed to follow "the idea of personal principle" in the internal and external organization of the states (Eötvös 1902-1903: 92-93). The essence of his ideas was that the political and human rights

should belong to individuals. In a democratic, multinational state with a mixed population, everybody should be given equal political rights and duties on a personal basis, and regard nationality, as well as religion, as personal human rights. Eötvös rejected the idea of the emancipation of national and linguistic minority groups, because he rejected the idea of assigning political and human rights to groups instead of individuals. In his opinion, giving political rights to religious, national, or linguistic minority groups made a free association policy among people impossible (Eötvös 1871: 94). In fact, Eötvös proposed the enlargement of the human rights with national minority rights. He outlined the framework of the Hungarian Nationality Law of 1868. This was the first comprehensive law on national and linguistic minority rights in Europe. It was highly appreciated in Western Europe, too (Bóka 1999: 445-446).

In reconstructing the Habsburg Monarchy Eötvös was in favour of the historical status quo. In other words, he wanted to accomplish the democratic reforms within the framework of the states developed historically. He proposed decentralizing the Empire and fragmenting its territory into provinces within their historical frameworks, providing self-government to the different provinces. This meant decentralization as well as a federative reconstruction. He also favoured the sovereignty of the historical member states as far as their internal affairs were concerned, although he wanted to subordinate common affairs to confederal institutions (Eötvös 1859: 81, 212). Eötvös was convinced that only democratic personalist federalism in decentralised "bottom-up" states could protect minority rights in multinational territories. It must be noted, however, that as a politician he made some compromises when he accepted the dualist system of the Austro-Hungarian Monarchy.

Karl Renner, Austrian social democrat, is regarded as one of the most important thinkers who elaborated the ideas of a democratic European integration policy. Renner favoured the personal principle and a multi-dimensional decentralised bottom up state organization; this meant the division of administrative, political, cultural, and economic organization of the state on basis of the personal principle and free association policy (Kann 1973; Bóka 2002). Renner strongly criticized and consciously rejected the idea of independent, territorially unitary, sovereign nation states as an outdated survivor of an expansionist culture (Renner 1916: 53). Just like Eötvös, Renner also proposed to use the principle of personal autonomy in territories of mixed populations. He also used the analogy between the solution of religious and of national conflicts. Renner believed that, while the political organization belonged to the administrative sphere of a state, the cultural, religious, and linguistic association policies should be separated from it. In his view, the Austrian federation should be composed of eight national member states with an internal structure inspired by the Swiss and the American Constitutions (Renner 1918: 146). He emphasised that in the case of the Habsburg Empire a three-fold personal self-determination is necessary: a historical, a cultural, and a federal. Renner aimed

at the reconstruction of Austria, which could also be used as an example for a future European union (Renner 1918: 94).

After the collapse of the Habsburg Monarchy he was in favour of a European federation. He thought that in the lack of democratic international policy the new small Central European states will become nationalists, and the great powers would only profit from this. To avoid a future war he became the member of the Pan European Movement, and supported federalism in Europe.

Another example is the work of Friedrich Naumann, entitled "Central Europe", which was also in the line of the various reconstruction projects based on historical status quo and personalist federalism (Naumann 1916). Naumann was in favour of decentralization, of a local autonomy system, of equal political and human rights, and of equal duties for everybody. He emphasized that the political organization had to be based on common, shared principles. Culture, language, and religion had to be separated from the political organizational sphere of the state, because they belonged to an autonomous personal sphere (Naumann 1916: 255). He elaborated ideas on the European integration by means of legal harmonization.

5. The struggle between nationalists and federalists in Europe, 1918-1945

Progressive political thinkers both from Western and Central Europe identified two major reasons for the victory of nationalism, and its aggressive consequences. The first was the inconsistent implementation of the democratic reforms within nation states; the second was the lack of a democratic coordination of international policy, and the weakness of international law. There was no coordination between the internal and external policies of the sovereign states. Consequently, the system of sovereign nation states could continue with their former expansionist policy. The conservative and autocratic tendencies, as well as the mentality of the old Europe, could survive. In other words, the sovereign nation states could maintain the principles of the old monarchic, feudal diplomacy by using the balance of power policy. The new wave of colonial expansions at the end of the 19th century only deepened the division and power struggle among European states, which culminated in the First World War.

After the First World War, the ancient methods of diplomacy still prevailed. Punishment, humiliation, ruining, and ruination still dominated the peace negotiations. But, at the same time, a new democratic international political thinking was also born, which slowly progressed. The Wilsonian policy played an important role in this. What Wilson told his contemporaries was that the principles of a democratic state organization, as laid down in the American constitution and in the Declaration of the Right of Man and of the Citizen, demanded a complete renewal of the old diplomatic principles in Europe (Schlochauer 1953: 150-153). Although the initiative of Wilson to establish new democratic

international legal principles for international diplomacy – popular sovereignty, national self-determination, and international legal organization – had no chance of becoming reality, the new democratic international political thinking could gradually influence political life. The Covenant of the League of Nations played an important role at this point. However, the European politicians, defending national sovereignty, were unable to create a European United States, as a regional association (democratic federation) inside the League of Nations, and as a guardant of peace after the First World War.

After the collapse of the Habsburg Empire, and between the two World Wars, the Pan European Movement represented the new democratic, international political thinking in Europe. It continued the democratic and international legal traditions of European federalism. It was based on the idea of personalism and subsidiarity in opposition to the classical power policy of sovereign nation states. The supporters of the movement regarded the League of Nations as an important step in the history of the development of democratic and federalist international relations, and of international law. For them it symbolised the birth of a World institution to coordinate the policy of sovereign states. A centuries' old dream became reality. They also criticised it because the League of Nations continued the classical confederalist traditions. The aim of the Pan European Movement was to establish the European United States within the framework of the League of Nations as a regional, constitutional federation. The members of the movement believed that after the First World War only the establishment of a European Federation could overcome nationalism and the rivalry among the newly created, small independent national states in Eastern Europe, as well as among their Western protectors. The Pan European Movement (Coudenhove-Kalergi 1926) proposed to begin cooperation in the area of economy and to establish an international Coal and Steel Carter in Europe; this was to be starting point, because there was no chance yet for a political union among sovereign nation states. The Movement also aimed at strengthening Europe against Russia and the United States of America. It fought for federalism on basis of the status quo, for democratic constitutional states, and for the protection of human rights (including the national minority rights). The program planned the establishment of the European Federation in several steps: the first step would be a confederate-type cooperation among sovereign states under the coordination of a European council (based on the example of the Pan American Union); the second step would be the establishment of the European Convention and of the constitutional federation following the Swiss model.

Count Richard Coudenhove-Kalergi, the leader of the Pan European Movement, and one of the founding fathers of the European Community, was a real European gentleman with German, Greek, and Japanese origins. He grew up in the Czech province of the Habsburg Monarchy. He was under the influence of the Central European personal federalists tradition, described in the preceding section, as

well as the constitutional federalist political philosophy of Western Europe. He thought that European unity would have to be established by creating a European constitutional federation following the Swiss model (Coudenhove-Kalergi 1934). This is also the way to solve the national, and national minority problem in Europe.

In his essays, Coudenhove-Kalergi tried to identify all events and ideas of the past that pointed toward a peaceful co-operation. He discovered the long philosophical and legal tradition of European federalism. While doing so, he created a synthesis of the progressive Western and Central European ideas. He adopted the ideas of the American Constitution of 1787, of the Declaration of he Rights of Man and Citizen of 1789, and of the principles of the Charter of the League of Nations. He thought that these documents, as logical products of the European legal development, represented the basic common principles of a democratic European political identity. He emphasised the necessity to declare the principles of the European human rights, involving the national and national minority rights, too.

By defining himself as European, Coudenhove-Kalergi wanted to revitalize the "futureless and depressed masses", as described by his colleague, Ortega y Gasset (Ortega y Gasset 1984), and to move them toward a democratic European identity and peaceful cooperation instead of protecting nationalism and totalitarian states. In the name of the idea of free persons and a free society the movement consistently fought every tendency that would represent expansionist goals or an unlimited concentration of power. In so doing, the Pan European Movement became the most important democratic oppositional force against the Fascist, National Socialist or Stalinist totalitarian states, and against their influences on a European federation. Coudenhove-Kalergi opposed the totalitarian dictatorships of his age in the name of the Declaration of the Rights of the Man and of the Citizen of 1789 (Coudenhove-Kalergi 1937). His goal was to motivate people to protect the democratic European federal idea and human rights, and to fight against Mussolini, Hitler, and Stalin. Coudenhove-Kalergi believed that democracy and peace in Europe depended on the victory of the federalists over the nationalists. In the field of the democratic international policy it meant the victory of the personal principle and subsidiarity (autonomy) above the principle of sovereignty of the nation state in the internal and external organization of the community of states.

His ideas on "the revolution of brotherhood" (die Revolution der Brüderlichkeit) exemplify his belief in the classical idea of world federalism, personalism and subsidiarity. In his words:

"Die politische Forderung der Brüderlichkeit ist der Föderalismus; der natürliche und organische Aufbau des Staates aus seinen Individuen.

Denn der Weg vom Menschen zur Welt führt durch konzentrische Kreise: Menschen bilden Familien – Familien Gemeinden – Gemeinden Kantone – Kantone Staaten - Staaten Kontinente – Kontinente den Planeten – Planeten das Sonnensystem – Sonnensysteme die Welt.

Jeder Mensch hat Teil an all diesen Gemeinschaften: aber er bleibt Mittelpunkt seiner Welt. ...

Dieser natürlichen Weltordnung entspricht das föderalistische System. Es fordert einen hierarchischen Aufbau der Welt von unten nach oben. Eine Gesellschaftspyramide wie der Feudalismus: aber von der Basis zur Spitze errichtet – statt von der Spitze zur Basis.

Die Staatsform des Föderalismus heißt nach innen Selbstverwaltung nach außen Staatenbünde. Sie lehnt den zentralistischen Staat ab – den zentralistischen Kontinent – den zentralistischen Völkerbund.

Die Gemeide ist ein Bund von Familien und Menschen; der Kanton ist ein Bund von Gemeiden; der Staat ist ein Bund von Kantonen; der Kontinent ist ein Bund von Staaten; die Menschheit ist ein Bund von Kontinenten. Die Grundlage dieses Systems ist die Freiheit des Individuums, der Gemeide, des Kantons, des Staates, des Kontinentes – und zugleich die Brüderlichkeit zwischen Individuen, Gemeiden, Kantonen, Staaten, Kontinenten: entschiedenste Ablehnung der Anarchie und der Staatstotalität.

Auf dieser festen Grundlage des Föderalismus, der Selbstverwaltung und des freien Individuums im gegliederten Staat ruht das Britische Reich, die Nord-amerikanische Union und die Schweizer Eidgenossenschaft. Durch das Prinzip der Brüderlichkeit haben sie unzählige Probleme gelöst, die die zentralistischen Staaten unlösbar schienen" (Coudenhove-Kalergi 1937: 182-183).

R. N. Coudenhove-Kalergi was the founder of the constitutional federalist direction of European integration: he was in favour of a voluntary union of Europe in a league of free and equal nations. He believed that Europe could not imitate the United States of America. It has to follow the Swiss example. In his words:

"Europe can learn only from a European example – from the Swiss federation, which has for centuries furnished the laboratory and the test-tubes for the European unification experiment. In any time which we care to foresee, for example, there can be no European president on the American model, but only a European directorate with changing presidency, as in the Swiss Bundesrat. As in Switzerland no canton may nominate more than one of the seven members of the Bundesrat, so the same principle would have to apply for the states of Europe. Similarly the two chambers furnish a model, one of which, the Ständerat, furnishes equal representation for all cantons, large and small, and the other, the Nationalrat, equal representation for all Swiss citizens. We can also take as a model the division of the seven common federal offices into the Foreign Office, the Home Office, the War Office, and the Ministries of Commerce, Finance, Communications, and Justice. Further examples for imitation are the division of sovereignty and financial power between the federation and the cantons, and the fundamental rights of Swiss citizens, and the safeguards for their equality irrespective of differences of language or religion. …

The Swiss federal constitution, adopted to the European order of magnitude and to the different historical development and constitutions of the European states furnishes the broad lines for the constitution of Paneuropa, the aim of which cannot be achieved at a blow, but which all Europeans must keep before their eyes as a proof that the peoples of Europe can unite when they wish" (Coudenhove-Kalergi 1939: 148-149).

"As a first step towards this great aim we can use the services of a Pan-European union of states formed on the model of the Pan-American Union, which has for half a century included all the Republics of the New World in a common organization" (Coudenhove-Kalergi 1939: 149).

Coudenhove-Kalergi, and his intellectual movement, had a great influence on Briand and on Churchill, too. His movement played a very important role in the establishment of the Council of Europe, and in the emergence of the constitutional, federalist European Parliamentary Movement in opposition of the unionist policy of Churchill after the Second World War. For the federal constitutional structure of Europe Coudenhove-Kalergi proposed a two chamber Parliament composed of a House of Peoples and of a House of States. He was in favour of a European constitution (Coudenhove-Kalergi, 1953: 161-164). He emphasized the necessity to discredit the idea of sovereignty. As a replacement it would be necessary to establish supranational institutions, and to develop and implement shared democratic external and internal legal organization principles for every nation state in Europe in harmony with international law, with human rights as the most important basis for the emergence of a democratic European law.

One of the most important political successes of the Pan European Movement was The Briand Memorandum (Briand 1998 569-582; in English: Harryvan – Van der Harst 1997: 28-33). Briand was the first politician who officially proposed the establishment of the European political and economic union within the framework of the League of Nations:

"The creation of a federal system in Europe would always be placed to the credit of the League of Nations as bringing about progress of which even nations outside Europe could reap the benefit" (Harryvan – Van der Harst 1997: 29).

Briand emphasised the need for a general agreement laying down the essential principles of cooperation. He was for the general subordination of economic problems to the political problems. As basic principles of the union of states he proposed:

"It is on the level of absolute sovereignty and of complete political independence that the understanding between European nations must be brought about" (Harryvan – Van der Harst 1997: 30).

"The principle that the European political cooperation should be directed towards the following essential object: a federation based on the idea of union and not unity – that is to say, a federation elastic enough to respect the independence and national sovereignty of each State while guaranteeing to all the benefits of collective solidarity in the settlement of the political questions affecting the destiny of the European commonwealth or that of one of its members" (Harryvan – Van der Harst 1997: 30-31).

"The principle that the economic organisation of Europe should be directed towards the following essential object: a rapprochement of the European economic system effected under the political control of the governments acting in concert." … For this purpose, the governments might themselves settle, definitively, in a document confined to general principles which would constitute a simple pact of economic solidarity, the objective which they intend to define as the ideal of their economic policy (the establishment of a common market which shall raise to the maximum the standard of human well-being in all the territories of the European commonwealth). In the favourable atmosphere of such a general orientation could be begun the immediate practical construction of a rational organisation of production and of European exchanges, by means of the progressive liberation and the methodical simplification of the circulation of goods, capital and individuals, due account being taken of the requirements of each State as regards national defence … " (Harryvan – Van der Harst 1997: 32-33).

The unionist initiative of Briand to unify Europe collapsed. The process of a democratic development of states stopped in Europe. Dictatorships and totalitarian states emerged as a result of the economic crisis. The European federalists strongly opposed the totalitarian national and communist systems; they defended the idea of a democratic constitutional federalism as a remedy of democracy in Europe.

In parallel with the Pan-European Movement the personalist movement emerged in France – sometimes referred as "personalist or integral federalism" – during the 1930s. It was based on the Proudhonian ideas. This philosophy was developed in the two organizations known as L'Ordre Nouveau and Esprit. They published reviews by the same name. The personalists were led by a small group of highly influential philosophers with Alexander Marc, Robert Aron, Emmanuel Mounier, Daniel Rops, and Denis de Rougemont taking the leading roles. Henri Brugmans joined after the end of the Second World War. His experience in the Resistance Movement converted Brugmans to personalism. The members of the personalist movement organized the New European Movement of personal or incremental federalists after the Second World War. Jacques Delors, a social Catholic, also belonged to this group.

The Catholic social theory also presented an idea of subsidiarity. The most important documents were two famous papal encyclicals; Rerum Novarum, 1880; Quadragesimo Anno, 1931. The principle

of subsidiarity acquired its first explicit formula in 1931 when Pope Pius XI made an address entitled Quadragesimo Anno. The first expression of the subsidiarity principle was formed as follows:

"Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is injustice and at the same time a great evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate organizations can do. … Thereby the state will more freely, powerfully, and effectively do all those things that belong to it alone because it alone can do them. … Therefore those in power should be sure that the more perfectly a graduated order is kept among the various associations, in observance of the principle of "subsidiarity function", the stronger social authority and effectiveness will be the happier and more prosperous the condition of the State" (Endo 2001: 18; EU History Site of Leiden University, Internet, 2005: http://www.eu-history.leidenuniv.nl).

Members of the Resistance Movement in the Second World War, inspired by pre-war European Union proponents such as Aristide Briand and Richard Coudenhove-Kalergi, blamed extreme nationalism as the primary cause of misery and chaos of the continent. Altiero Spinelli, one of the most important leaders of the international Resistance Movement, regarded the Federalist papers and the American constitution as examples for European social organization after the Second World War. He founded the European Federalist Movement that adopted the Ventotene Manifesto as its political program. The manifesto emphasised that the main division that separates the party members into two groups is between the supporters of the national sovereignty and the supporters of the creation of a solid international state. The later uses national power for achieving international unity. International unity could be achieved by establishing single federal states in which "each states will retain the autonomy it needs for a plastic articulation and development of political life according to the particular characteristics of its people" (Lipgens 1991: 471-473).

The Constitutional Federalist strategy had a strong institutional component and focused on the immediate establishment of federal political institutions, above all a supranational government directly responsible to the European citizens instead of to national governments. The idea was that, once these organs were established, further transfer of authority from the nation-state to the federal state would occur automatically.

6. The role of the dichotomy sovereignty versus subsidiarity in the struggle between unionists and federalists, 1945-49

After the Second World War the principles of the democratic international law and of human rights were redefined. The classical Aristotelian and Althusian world federalist model, and the contractual natural legal philosophy of the Enlightenment dominated again international legal thinking. The former European system of sovereign nation states was strongly criticised. The new principles of international

law and of universal human rights were destined to bind the persons, the different levels of autonomous communities, and the autonomous and not sovereign sates worldwide. This renewed international legal thinking aimed at diminishing the influence of the sovereignty of states by forcing the governments to accept international law and human rights, and the idea of legal harmonisation.

In parallel, European federalists – under the influence of the European federation plans of the Resistance Movement – began the great reconstruction work of the former sovereign nation state system in Europe (Lipgens 1968). As a first step, it was necessary to lay down the new principles for a democratic Europe: this required to face and to understand the European past. The supporters of a new democratic Europe were in favour of the creation of a democratic community of European states. They regarded the principles of the Charter of the United Nations of 1945 and of the Universal Declaration of Human Rights of 1948 as guiding principles in their endeavour for a European integration policy. They envisaged the European federation or union as part of the peaceful world federation.

After the war the influence of the British unionist policy, and of the British leader, Churchill, became determinant for the European integration policy. The federalist élan diminished step by step as the former nation states and national governments were reconstructed. The struggle between the supporters of the sovereignty of nation states and of a European federation of citizens and of autonomous states dominated again European policy. European federalism continued to be based on the personal autonomy principle and the principle of autonomy (subsidiarity) of the state.

There were different approaches to international policy in Western Europe after the Second World War. Basically, three main directions emerged: the nationalist, the unionist, and the federalist. The Universal Declaration of Human Rights definitely condemned nationalism on basis of the tragic historical experiences. The nationalists opposed the establishment of a European union. The unionists and the federalists were for a peaceful European international policy based on European law. However, their visions on the cooperation among states were very different. Consequently, though speaking about the same goals, they supported different institutional structures.

The unionists, led by Churchill, wanted to continue the former confederalist cooperation policy without any supranational institutions. I.e., they continued to support the idea of sovereignty of the state and of the classical intergovernmental cooperation of national leaders.

The functionalists, led by Mitrany – who finally joined the unionists – considered the transfer of national powers to a supranational level only when it could be demonstrated that the problems they addressed could not be solved by another way. Some of the functionalist group may have believed that this was a real option, but for most this rhetoric was a cover for the belief that no such transfer of power was necessary (Griffiths 2000: 30).

The federalists – in opposition to the unionists – formed two groups: the constitutional federalists and the neo-federalists (incremental or personalist federalists). The constitutional federalists – Coudenhove-Kalergi and Altiero Spinelli – focused on the need for a federal parliamentarian constitution with democratic legislative, executive, and judicial powers. The constitution would define the relationship between the member states and the federal levels. However, the federalists generally envisaged that powers over foreign policy, defence, human rights, taxation, trade, currency, and economic policies should all reside at the federal level. Their immediate aim was to convene a constituent assembly that would draft the treaty. The unionists (intergovernmentalists) regarded the constitutional federalists as unrealistic dreamers (Griffiths 2000: 30).

The first step towards European cooperation was the creation of the Council of Europe. It realized an ancient dream for a common European institution. However, it meant a defeat for the constitutional federalists. The Statute of the Council of Europe followed the classical European confederative model of intergovernmental cooperation among sovereign nation states. It was based on the principles of the Charter of the United Nations, and it accepted the principles of the Universal Declaration of Human Rights. With legal harmonization in mind, the European Convention for the Protection of Human Rights and Fundamental Freedoms was also drafted, in accordance with the international legal documents cited above.

7.   Subsidiarity and the supranational start

European integration started with the Schuman Plan (Foundation Robert Schuman, Internet, 2005: http://www.robert-schuman.org) and the establishment of the first supranational institution, the High Authority in the framework of the European Coal and Steel Community (ECSC) (Bóka, 2004 67-68). The Treaty of Paris equipped the ECSC with a Parliamentary Assembly and a Court of Justice, too. In other words, the Treaty establishing the ECSC laid the foundation of the community structure that still exists today. The aim of the ECSC was:

"By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace" (Internet, 2005 http://www.robert-schuman.org; Harryvan – Van der Harst 1997: 61-63). I.e., through the ECSC Monnet established the first federalist-functionalist organization, which was to become the core of the European integration.

The aim of the Monnet-method was to establish "the greatest solidarity among peoples". In his words: "We have seen that Europe has overcome the attitude of domination which ruled state policies for so many centuries. But quite apart from what this means for us in the old continent, this is a fact of

world importance. It is obvious that countries and peoples who are overcoming this state of mind between themselves will bring the same mentality to their relations with others, outside Europe. The new method of action developed in Europe replaces the efforts at domination of nation states by a constant process of collective adaptation to new conditions, a chain reaction, a ferment where one change induces another" (Monnet 1962: 20-21).

Europe's first constitutional draft (1953), the Draft Treaty Embodying the Statute of the European Community, Strasbourg, on the 11th March 1953 (Griffiths 2000: 189-226; Harryvan – Van der Harst 1997: 75-79) shows the federalist aims of the founding fathers:

"The present Treaty sets up a European Community of a supranational character.

The Community is founded upon a union of peoples and States, upon respect for their personality and upon equal rights and duties for all. It shall be indissoluble.

The Community has the following mission and general aims:

To contribute towards the protection of human rights and fundamental freedoms in the Member States; To cooperate with the other free nations in ensuring the security of Member States against all aggression; To ensure the cooperation of the foreign policy of Member States in questions likely to involve the existence, the security or the prosperity of the Community; To promote, in harmony with the general economy of Member States, the economic expansion, the development of employment and the improvement of the standard of living of the Member States, by means, in particular, of the progressive establishment of a common market, transitional or other measures being taken to ensure that no fundamental and persistent disturbance is thereby caused to the economy of Member States; To contribute towards the endeavours of Member States to achieve the general objectives laid down in the Statute of the Council of Europe, the European Convention for Economic Cooperation, and the North Atlantic Treaty, in cooperation with the other States parties thereto.

…

The Community together with the European Coal and Steel Community and the European Defence Community shall constitute a single legal entity.

The institutions of the Community shall be: The Parliament, The European Executive Council, The Council of National Ministers, The Court of Justice, The Economic and Social Council

The Parliament shall enact legislation and make recommendations and proposals. It shall also approve the budget. It shall be composed of two Chambers which, unless the present Statute otherwise provides, shall have the same powers and competence. The first Chamber, entitled the Peoples' Chamber, shall be composed of deputies representing the peoples united in the Community. The Second Chamber, entitled the Senate, shall be composed of senators representing the people of each

State. Senators shall be elected by the national Parliaments for five years in accordance with the procedure determined by each Member State.

Members of Parliament and of the European Executive Council shall have the right to initiate legislation. Members of Parliament shall have the right of amendment and interpellation.

The European Executive Council shall undertake the general administration of the Community. It shall have no powers other than those conferred upon it by the present Statute. The Senate shall elect the President of the European Executive Council in secret ballot, by majority vote of its Members. The President shall appoint the other Members of the European Executive Council. The Members of the European Executive Council shall have the title of Ministers of the European Community. The European Executive Council shall take decisions, make recommendations or express decisions. The President of the European Executive Council shall represent the Community in international relations.

The Council of National ministers shall exercise the powers and competence in the cases specified and in the manner indicated in the present statute with a view of harmonising the action of the European Executive Council with that of the Governments of Member States. The Council of National Ministers and the European Executive Council shall exchange information and consult each other.

The Council of National Ministers shall be composed of representatives of the Member States. Each state shall delegate a member of its government as a representative"

(Harryvan – Van der Harst 1997: 75-79).

Europe's first constitutional draft was not federal, but it could be developed in this direction (Bóka 2004 68-70). Thus the new European international legal policy was a far cry from the former policy of sovereign nation states. However, the governments did not favour such a change. The defeat of the European Defence Community and of the Draft Treaty Embodying the Statute of European Political Community (1953) were setbacks for the federalist movement. Constitutional federalism, represented by framework of a European Parliament with two chambers and based on the personal principle and the principle of autonomy (subsidiarity) of the member states, was defeated in 1954.

The crisis of European integration was only temporary. In 1955, two federalist proposals were drafted simultaneously: a plan by Jean Monnet for a European atomic energy agency and a plan by the Dutch foreign minister Jan Willem Beyen for a common market in Western Europe. In June 1955, in Messina, the foreign ministers decided to embark upon multilateral negotiations on both economic and atomic integration. This led to the signature of the Treaty of Rome (in 1957) and to the creation of the European Economic Community (EEC) and the Euratom in 1958. The EEC's institutional framework, in fact, was in many respects similar to the ECSC's, although the Council of Ministers was

strengthened in its relation to the Commission. The European Parliament was not directly elected and had little authority.

As a counterpart of the EEC Britain, the three Scandinavian countries, Portugal, Austria and Switzerland founded the European Free Trade Association (EFTA), which had an intergovernmental structure. It never obtained the importance of the EEC.

Monnet assessed the results of the new European integration policy in 1962 as follows: "It [the new Europe] is not federal because there is no central government; the nations take their decisions together in the Council of Ministers. On the other hand, the independent European body proposes policies, and the common element is further underlined by the European Parliament and the European Court of Justice. … European unity is the most important event in the West since the war, not because it is a new great power, but because the new institutional method it introduces is permanently modifying relations between nations and men. Human nature does not change, but when nations and men accept the same rules and the same institutions to make sure that they are applied, their behaviour towards each other changes. This is the process of civilization itself" (Monnet 1962: 23-24).

Monnet believed that the direction to follow was to establish federalism in Europe. Federalists and intergovernmentalists had to keep this direction. The future of the European Community depended on the democratisation of the supranational European institutions in harmony with the democratisation of the intergovernmental policy of the member states. The principle of subsidiarity played an important role in this framework.

8. Subsidiarity as the means of balance between supranationalists and intergovernmentalists

The Monnet-method was successful in the field of economic cooperation. Nevertheless, the force of nationalism had been underestimated. The policy of the French president De Gaulle was an obvious example (De Gaulle 1970: 181-182, 193-195). In the political practice, after the Luxembourg Compromise, decision-making on the basis of consensus instead of majority voting became the rule. The veto right denied the EEC of an important instrument for enlarging both its authority and its powers. De Gaulle's policy started a new intergovernmental period of European integration. Nevertheless, De Gaulle's attack against the federalists, and the supranational institutions aiming to safeguard the classical intergovernmental policy among the sovereign nation states, left the EEC Treaty unscathed. Thanks the other member states a kind of a two-level governance emerged step by step inside the European Community.

After De Gaulle's resignation in 1968 the dichotomy between supranational versus intergovernmental governance became characteristic of the European integration policy:

"We speak of intergovernmental cooperation in the case of an organized linkage between sovereign states, which while retaining their independence, have agreed to a certain level of joint policy making regarding a well defined internal and/or external policy area. In the common institution they create for this purpose, representatives of the associated states all possess the right of veto. This means that each member states has the right to unilaterally block proposals put forward by other member states.

In the case of supranationalism, the countries involved decide to create an institution capable of independent and coercive action. To this end, the countries make themselves subservient to this body by means of a (partial) transfer of sovereignty from the national to the supranational level. Within a supranational institution the power of veto is ruled out; all the participating countries have to reconcile themselves to the decisions taken by majority vote.

In general, intergovernmentalism is characterised by 'cooperation' and supranationalism by 'integration' or 'unification'. Within the institutional framework of the EC the European Commission is considered supra-national and the Council of Ministers intergovernmental" (Harryvan – Van der Harst 1997: 1-2).

After De Gaulle's attack on federalism and the supranational institutions three, competing integration theories emerged. The first, conservative confederalism, aimed at safeguarding and strengthening sovereign states (Margaret Thatcher), and weaken supranational institutions. The second placed the emphasis on the intergovernmental policy of nation states in supranational institutions (Andrew Moravcsik). The third favoured the strengthening of supranational institutions and of federalism (Leo Tindemans, Altiero Spinelli, Jacques Delors). The federalists had to face the challenge of the conservative confederalists and of the intergovernmentalists.

The most important representative of conservative unionism was Margaret Thatcher. She was a real eurosceptic. In accordance with De Gaulle she favoured the cooperation among European states, and the establishment of the European Family of Nations. She wanted to achieve this goal by intergovernmental cooperation. She denied the importance of supranational institutions (Holmes 1996: 88-96).

Andrew Moravcsik represented intergovernmentalism. He supported the principle of intergovernmental institutionalism. This meant the continuation of the national policy in supranational institutions. He believed that European policy could be based on intergovernmental bargaining in the framework of supranational institutions with regard and with respect of the European law and legal harmonization. Thus, European integration should be based on the interests of the states coordinated by supranational institutions (Moravcsik 1991: 25, 48, 56).

The supporters of the supranational institutions belonged to the federalists. They remained active even after the defeat of the federalist European policy. The federalists were consistently opposed to the strengthening of the sovereignty of member states, and to the classical intergovernmental centralism. In opposition to De Gaulle's policy Walter Hallstein, the federalist president of the European Commission, was in favour of realizing the ideas of the Draft Constitution on the European Political Community of 1953, mentioned above. He wanted to strengthen the European supranational institutions. In 1974 Leo Tindemans proposed to the European Council to continue on the way of European federalism. He favoured the establishment of a European Parliament composed of two chambers, and the use of the federalist principle of subsidiarity instead of sovereignty (Tindemans 1976).

The famous European federalist, Altiero Spinelli, emphasised the importance of the supranational institutions (Parliament, Commission, European Court) and the European law in building the European Community. In his view these institutions worked as a counter balance to intergovernmental policy. Consequently, classical conservative confederalism could not gain (Spinelli 1983). Spinelli believed that the main actors of intergovernmental policy, the national governments, see and desire the European objective only from a national point of view. This makes agreements among governments difficult, because all is reduced to the lowest common denominator. Governments seek European decisions by means of an abortive combination of national decision-making procedures. Consequently, reaching consensus is as difficult as to break out of a vicious circle. He thought that only in the moment of crisis do governments pay more attention to European oriented proposals (Spinelli 1972: 14).

It was Altiero Spinelli who introduced the principle of subsidiarity in the EU's formal legal document, when he first led the European Commission to make a contribution to the Tindemans Report in 1975, and then the European Parliament to adopt the Draft Treaty on European Union in 1984 (Endo 2001: 23). Seeing the crisis of the European integration Spinelli insisted on the necessity of institutional reforms, which were outlined in the Draft Treaty establishing the European Union (Spinelli draft) (Bieber – Jacqué – Weiler 1985: 306-329). In this document he put forward a system of two chambers: the European Parliament and a Council consisting of ministers for Europe residing in Brussels. In his proposal the unifying federal force should also include a supranational institutional system. As a compromise between the federalists and the intergovernmentalists he proposed to include the principle of subsidiarity in the EU Treaty:

"Intending to entrust common institutions, in accordance with the principle of subsidiarity, only with those powers required to complete successfully the tasks they may carry out more satisfactorily than the States acting independently" (Bieber – Jacqué – Weiler 1985: 306). The Spinelli draft

expressed the subsidiarity principle in the following terms: "The Union shall only act to carry out those tasks which may be undertaken more effectively in common than by the Member States acting separately, in particular those whose execution requires action by the Union because their dimension or effects extend beyond national frontiers" (Bieber – Jacqué – Weiler 1985: 309-310).

Article 66 points out that the Union shall conduct its international relations by the method of cooperation when the member states acting individually cannot act as efficiently as the Union (Bieber – Jacqué – Weiler 1985: 323).

The competences left to the Union by the specific articles of the Draft Treaty were sufficiently broad: monetary policy, sectorial policy (agriculture, transport, telecommunications, research and development, industry, energy), social and health policies, environmental policy, education and research policy, cultural policy, industrial policy. Spinelli proposed to extend the field of cooperation to defence, disarmament and foreign policies, too (Bieber – Jacqué – Weiler 1985: 318-324).

In Spinelli's view the establishment of the subsidiarity principle would constitute a guarantee against centralization. This was a direct consequence of his classical world federalist thinking. Actually, Spinelli's political actions are only understandable in a historical context. The intellectual origins of his federalist ideas stretched back to the inter-war years. In the resistance movement he became a constitutional federalist. His whole political life proves his unbroken continuity of the federalist ideas; the Draft Treaty establishing the European Union of the European Parliament is only a late manifestation of those. He regarded subsidiarity in conjunction with the personal principle: both were basic principles of federalism in the European federalist thought. For Spinelli, who believed in the classical idea of world federalism, and who supported the democratic international law and human rights, subsidiarity served as a means of federalism in social organization. In his view, the European Federation has to become the federation of persons and of autonomous member states. In such a federation subsidiarity was the means of placing the autonomous member states into the framework of a larger federation, in harmony with federal constitutional law, international law, and human rights. Such a federation could only function if the interests of the persons, as citizens of the union and also of the states, were represented in the Parliament. He believed that subsidiarity could work in an optimal manner only in a federation where there was harmony between the personal principle, and the subsidiarity principle within the framework of the European Parliament.

Spinelli emphasised the necessity to reform the European Parliament: "The European Parliament shall be elected by direct universal suffrage in a free and secret vote by the citizens of the Union. … The Parliament shall participate, in accordance with this Treaty in the legislative and budgetary procedures and in the conclusion of international agreements. It shall enable the Commission to take office by approving its political programme, exercise political supervision over the Commission, and

have power to adopt by a qualified majority a motion of censure requiring the members of the Commission to resign as a body" (Bieber – Jacqué – Weiler 1985: 311). He believed that the cooperation among the Commission, the European Parliament, and the European Court of Justice could start the necessary institutional reform. He thought that the antidote of the Commission's weakness laid in strengthening the EP's legislative power.

In the lack of a federal European government Spinelli recognised the importance of the advisory function of the heads of governments of member states. In the Draft Treaty he introduced a new institution, namely the European Council, consisting of the Heads of State or Government of the Member States of the Union, and the President of the Commission. The European Council's function was to formulate recommendations and undertake cooperative commitments. He emphasised that, although the Summit was not formally institutionalised, it had in fact become an institution that laid dawn from time to time certain important guidelines and common political tasks for the member states.

In conclusion, the role of subsidiarity in Spinelli's work was to bind the European Community and its institutions. He believed that subsidiarity could function as a balance of power between the federalists and the intergovernmentalists and the integration process could continue. However, the federalists had to struggle further for the democratisation of the EU institutions. Spinelli's policy and The Draft Treaty establishing the European Union started a new federalist élan in the European integration, with a major role given to subsidiarity.

Jacques Delors, as president of the European Commission, continued the federalist policy of Jean Monnet, Walter Hallstein and Altiero Spinelli. In his speech (Bruges, 17th October 1989) Delors defined himself as a personalist European federalist, a disciple of Emmanuel Mounier: "I often find myself invoking federalism as a method, with the addition of the principle of subsidiarity" (Address by Mr. Jacques Delors, Bruges, 17 October 1989, in: Nelsen – Stubb 1994: 52). His teacher, Mounier was the spiritual inspirator and leader of the Personalist Movement in opposition to the totalitarian state and all kinds of classical centralisation policies (Mounier 1936).

With important changes in world policy Delors stood before the challenge of democratisation of European policy. He proposed a vision of a federation of nation states. He emphasised that his vision did not follow previous examples. He wanted to unite not only the people, but the nation states, too. His goal was that all Europeans could feel to belong to a Community that they see as a second homeland. In his view if such a European identity would be rejected then – in his words – "European integration will founder and the sceptre of nationalism will return to haunt us, because the Community will have failed to win the hearts and minds of the people, the first requirement for the success of any human venture" (Address by Mr. Jacques Delors, Bruges, 17 October 1989, in: Nelsen – Stubb 1994:

60-61). He emphasised that a radical change was necessary in the way persons think of the community and in the way they act on world stage (Nelsen – Stubb 1994: 63).

Delors thought that the problem of European integration was that the European construction did not start with a clear announcement of what the repartition of powers would be at the end of the process. In his words: "The Treaty has transferred limited competences to the Community in well-defined fields: realizing the common market, developing common policies (agriculture, trade policy, structural policies)". Therefore "the extension of the competences of the union to areas which are 'federal' by nature should imply a rethinking of the European construction towards real equilibrium between the Community level, the national level, and the local level" (Delors 1992: 11).

His vision on the federation of nation states was based on the basic principles of federalism, which were the personal principle and the principle of autonomy (subsidiarity). He turned towards the principles of federalism because they provided all the necessary guarantees on pluralism and efficiency for the emergent institutional machinery. Regarding cooperation among nation states, federalism represented two essential rules:

1. The rule of autonomy (subsidiarity), which preserves the identity of each member state and removes any temptation to pursue unification regardless.

2. The rule of participation, which does not allow one entity to be subordinated to another, but on the contrary, promotes cooperation and synergy, on the basis of the clear and well-defined provisions contained in the Treaty (Nelsen – Stubb 1994: 60-61).

In Delors' explanation subsidiarity can be applied in two different situations: "on the one hand, as the dividing line between the private sphere and that of the State, in the broad meaning of the term; on the other hand, as the repartition of tasks between the different levels of political power" (Subsidiarity 1991: 7). He believed that subsidiarity as federal principle comprised two infrangible aspects: "the right of each to exercise his responsibilities there where he can perform them best, and the obligation of the public authorities to give to each the means to reach his full capacity" (Subsidiarity 1991: 18). He emphasised the importance of letting the citizens know what belongs to each of the levels of authority; one part of the 'democratic deficit' in the Community originated from this lack of visibility. Thus, the clear determination of the citizen's reciprocal responsibilities and of the different levels of power was very important. As an example he mentioned Tocqueville who highly appreciated this solution (Subsidiarity 1991: 18).

Delors also emphasised that subsidiarity is a federal state organizational and international organizational principle. He definitely rejected to use it in the name of nation-states (Subsidiarity 1991: 8). Such a policy would cause dead locks with serious consequences in European social organization.

The European Institute of Public administration organized a colloquium on Delors's initiative (Subsidiarity 1991). The participants of the discussion regarded subsidiarity as an old historical principle. However, they referred to subsidiarity differently, depending on their EU political views. Basically, they constituted two groups: the federalist and intergovernmentalist. Both accepted Jacques Santer's definition as the most appropriate: "La Communauté ne peut intervenir que dans les seuls cas où les Etats sont impuissants" (Subsidiarity 1991: 40). But, in practice, federalists and intergovernmentalists interpreted subsidiarity differently. The federalists regarded it as a means of solving the democratic deficit of the EU. The intergovernmentalists used it to strengthen the role of national governments in EU policy, and to keep things in the hands of national states. Despite these opposing interpretations and acts – and thanks to the supranational institutions – subsidiarity is able to play the role of bridge between these conflicting views (Subsidiarity 1991: 39, 160).

9. Subsidiarity as legal principle

This historical analysis shows that subsidiarity – as a result of a political compromise – serves to bridge the Community's federal deficit. Subsidiarity seems like a political principle of repartition of competences between the Union, the States, and the Regions. It works in opposition to sovereignty. It reflects also the philosophy of power sharing, and it forms an interpretive guideline for those who implement or control the use of the Union competences. Practice proved that it could be used as a criterion for the repartition of competences between the Federation and the States. Based on all these experiences subsidiarity became one of the basic principles of the EU Treaties.

The subsidiarity principle implicitly appeared in the Treaties establishing the Communities. Article 235 of the EEC treaty and the equivalent Articles of the ECSC and Euratom Treaties may be seen as illustrations of the susidiarity concept (Subsidiarity 1991: 22).

The Draft Treaty establishing a European Union defined the subsidiarity principle – as mentioned above – in its Preamble and its article 12 and 66.

Article 25 of the Single European Act explicitly includes the subsidiarity principle in the Rome Treaty:

"The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual member states. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures" (Single European Act 1986: 33).

The principle of subsidiarity was eventually included in Article 3b2 of the Maastricht Treaty:

"In areas which do not fall within its exclusive competence, the Community shall take action, in accordance to the principle of subsidiarity, only if and in so far as the objectives of the proposed action

cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community" (Treaty on European Union 1992: 11-12).

The Protocol of the Treaty of Amsterdam attempted to clarify the definition of subsidiarity: as an innovation Provision 3 on the application of the principles of subsidiarity and proportionality states that subsidiarity is a principle regulating the exercise of Community competences:

"The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified" (European Treaty of Amsterdam 1997: 105-107; Estella 2002: 103).

One can conclude that in the various Treaties subsidiarity is a criterion for defining Community tasks in relation to national tasks. It also regulates the exercise of Community competences. The individuals and the local communities can act freely in a large extent. The regions can also play a vital role. The states can also develop according their own aspirations free of unnecessary things imposed from above (Subsidiarity 1991: 28-29). By using subsidiarity as a governing principle of the EU the old sovereignty principle lost its importance in the international organization of Europe.

However, the real problem with subsidiarity is that its definition is very much under discussion in present EU policy. Subsidiarity is interpreted in two characteristic ways expressing the federalist contra intergovernmentalist dichotomy: according to some, everything, which cannot be dealt satisfactorily at the national level, should be entrusted to the Community. According to others, however, the principle of subsidiarity should be applied in favour of states or regions. The Community may intervene only in cases where the states are incapable of doing anything (Subsidiarity 1991: 29). Because the different political players choose one or the other of the two approaches on a case-by-case basis, subsidiarity could not become a general line of conduct. The real question is whether the two approaches – federalist contra intergovernmentalist – will be reconcilable by further democratic reforms?

10. Conclusions

One could conclude that although subsidiarity was presented as something new at the time of the Maastricht debate, there is in fact nothing new about it; it has been known for centuries. Subsidiarity is simply an elementary principle of democratic federal government. It belongs to the history of statehood and of international law. Subsidiarity appeared in conjunction with the personal principle in the international law. Both principles belong to the idea of peaceful world federalism. In this line of thoughts subsidiarity means the autonomy of the communities of persons in harmony with the whole. Thus, the idea of personality and subsidiarity has to be in harmony with the democratic international law and human rights.

The development of the idea of subsidiarity belongs to the development of international law. The first important result of the democratic and international legal thinking was the establishment of the League of Nations in 1918, and the Covenant of the League of Nations. Its development was paralysed by the emergence of totalitarian states and the Second World War. Social organization based on international law and human rights as a global political process started only with the establishment of the UNO, and the Universal Declaration of Human Rights. European integration belongs to this process. It started with federalist goals; however, after the defeat of European federalism, Europe's governance became intergovernmental with supranational elements. In this situation the principle of subsidiarity kept a sort of grand-coalition together; a coalition among the different political groups and the different governmental levels of the EU. Finally, subsidiarity was elevated to a constitutional status in Maastricht.

The problem with the subsidiarity principle is that the two main oppositional directions of the EU policy – federalism and intergovernmentalism – define subsidiarity differently. As a consequence, subsidiarity seems confusing and indefinable. The federalists favour the strengthening of the personal principle and the principle of subsidiarity by constituting a two chamber European Parliament. Their purpose is to create the Europe of persons (citizens) and of autonomous states (Member States). The unionists use subsidiarity to strengthen the national autonomy of Member States, and the autonomy of persons as citizens of Member States. In other words, subsidiarity is not an indefinable principle, but rather the same principle representing different goals and institutional structures for federalists and for intergovernmentalists. The real questions are therefore: could subsidiarity act as a good compromise between federalists and intergovernmentalists? Could it work as a constitutive principle of multilevel governance in future, too?

According to the Draft Constitution, 2003 the European Parliament represents the European states and not the European people. Put it differently, the European Parliament represents many peoples, and

not one European people. In the Council each national government represents the interests of its own state. In this system – thanks to the supranational institutions – subsidiarity plays the role of a balance between the federalists and the intergovernmentalists, keeping the integration process alive. Thus, the Draft Constitution represents the important fifth step – the first was the establishment of the Council of Europe, the second of the ECSC, the third of the EEC, and the fourth of the EU – on the way of European integration. It keeps the door open for future federalist reforms in a personalist direction: the establishment of the European Parliament of European citizens and of citizens of member states.

It seems that despite its present balancing function it would be necessary to rethink how to really bind the Community through subsidiarity. Further reforms are necessary; the EU continues to suffer from a democratic deficit, due to the fact that the European Parliament does not occupy a central role in the Community's decision-making process. The only way to solve the Community's democratic deficit would be to invert the roles of the Council and of the European Parliament in the legislative process. The Parliament should occupy the central position (overall), whereas the Council should become the equivalent of chambers of territorial representation (Estella 2002: 70-71).

In conclusion, the EU's future depends on the strength of the two oppositional forces of European history: sovereignty and subsidiarity. Subsidiarity as an opposite principle to national state sovereignty could give the European integration future alternatives if it could develop in the personalist federalist direction, and if people could strengthen subsidiarity as a means of defending their own communities within a larger European Community. A Europe of free persons and free states could then emerge, a *'European Parliamentary Federation'*. But if the persons (citizens), in the lack of a European identity and of a democratic international legal knowledge, choose the strengthening of the sovereign nation states interests, and for a reawakening of the national sovereignty, we have to face a new age of authoritarian states, and of a new form of world nationalism. In this case the responsibility of the persons (citizens) and of their governments would be undeniable Europe-wide, while the tragic consequences of such a mentality and vote are already known for everybody.

Rethinking the democratic federalist European ideas and principles could help us finding peaceful and legal ways to shape a democratic European Union.

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