Approaching the EUropean Federation?
The end of the Cold War profoundly altered the dynamics between and within the various states in Europe and the rest of the World resulting in a resurgence of interest in the concept of federalism. This shift in balance has been further fuelled by the increase in the number of conflicts arising from the disaffection of the diverse ethnic or religious minorities residing within these states (e.g. Sudan, Iraq). Furthermore, globalization is forcing governments not only to work together, but also to reconsider their internal roles as guarantors of economic growth, with regions playing the major part.

It is the aim of the series to look at federal or federated states in historical, theoretical and comparative contexts. Thus it will be possible to build a common framework for the constructive analysis of federalism on the meta-level, and this, in turn, will enable us to identify and define federal tradition traditions, and develop the theoretical.

This unique and ground-breaking new series aims to promote a complete and indepth understanding of federalism by collectively bringing together the work of political scientists, lawyers, historians, economists, sociologists and anthropologists, and, with this in mind, contributions are welcomed from authors in all of these disciplines. But whereas the federal approach is the crank of the series, it does not mean, that contributions must adhere to the federal approach critical contributions are welcome too.

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Constitutionalising Europe

Michael Longo

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Approaching the EUropean Federation?

Edited by

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List of Abbreviations

ASEM  The Asia-Europe Meeting
B-VG  Bundesverfassungsgesetz (Austrian constitution)
CAP   Common Agricultural Policy
CEC   Commission of the European Communities
CFSP  Common Foreign and Security Policy
CoR   Committee of the Regions
COREPER  Comité des Représentants Permanents (Committee of Permanent Representatives)
CT    Constitutional Treaty (Treaty establishing a constitution for Europe)
EC    European Community
ECB   European Central Bank
ECJ   European Court of Justice
ECOFIN Council of Ministers comprising of ministers of finance and economics
ECSC  European Coal and Steel Community
EEA   European Economic Area
EMU   Economic and Monetary Union
ESCB  European System of Central Banks
ESPON European Spatial Planning Observation Network
EU    European Union
GATT  General Agreement on Trade and Tariffs
GDP   Gross Domestic Product
GG    Grundgesetz (German constitution)
GNI   Gross National Income
GNP   Gross National Product
HICP  Harmonized Index of Consumer Prices
ICC   International Criminal Court
IGC   Intergovernmental Conference
ISLM  Investment Saving Liquidity Money
NATO  North Atlantic Treaty Organization
OCA   Optimal Currency Area
OECD  Organization for Economic Cooperation and Development
SEA   Single European Act
SGP   Stability and Growth Pact
TEU   Treaty on the European Union (known as the Maastricht – or Nice – Treaty)
TIA   Territorial Impact Assessment
Chapter 1

Introduction

Søren Dosenrode

Why this Book?

The European project has, since it was initiated in 1951, had a surprising momentum, and the European Union (EU) has now, according to some authors, approached statehood, although this fact is not always welcomed in northern Europe. A Convention on the Future of Europe handed over a proposal for a constitutional treaty to the heads of state and government of the EU, who used it as a starting-point for a new ‘Treaty Establishing a Constitution for Europe’ which was signed in Rome in October 2004. This Constitutional Treaty (CT) has not had an easy way when it came to ratification in some of the Member States. This has been ascribed to a number of factors, of which some had nothing to do with the treaty itself (in France, the apparent dislike of the President as well as a realization of the consequences of the Internal Market which was ratified in 1987 were important factors explaining the ‘no’, and in the Netherlands an important factor was bad communication; a large number of citizens did not understand the CT and its implications and thus voted ‘no’ – a very rational behavior) and others were ‘would-be consequences’ of CT (the French and Dutch fear of a Turkish EU membership, which also played an important role among the majority of the voters saying ‘no’ in Luxembourg). The summer summit of 2005 put the CT ‘on the shelf’ as some commentators said, but it does not change the fact that the CT is an important contribution to the European integration process, and that it will influence the next decades’ development of integration in Europe, be it as fully ratified, as partly incorporated or as inspiration for the Union. That the ‘shelving’ of the CT is not absolute can be seen from the remarks from the European heads of state and government, that is, the statements of Chancellor Merkel and President Chirac of 6 June 2006, who agreed that the discussion process should be brought to an end in the second half of 2008, under the French EU presidency. Mrs Merkel stated: ‘A functioning Europe needs this [the constitutional] treaty.’

One important aspect of the CT is that it represents a common denominator of the heads os state and government in the enlarged EU that is 25 states. Never before have the elites (!) of Europe adopted such an ambitious document and invested such an amount of political energy and prestige. But the French ‘non’ and the Dutch ‘nee’ has pointed out the aspect of the ‘elite-people relationship’, which has occurred several times in EU history (the best-known example was the Danish ‘nej’ to the Maastricht Treaty and the following French ‘justement oui’).
But behind the apparent agreement of the governments of the EU Member States remains the big question: which way for Europe; a federal direction or an intergovernmental approach? In this sense it is the hour of truth, but again one has to remember that the present EU is a mix of the two approaches, just as the US was until the end of the Civil War.

As we expect the CT to have a lasting impact on the Union, it is timely to present an integrated analysis of central concepts and questions related to the EU and the CT. But as the CT’s concrete future is uncertain, the aim of the book has been to present fundamental analysis which is independent of the destiny of the CT, but which relates to it, for example, the question of the relationship of constitution and legitimacy, constitution and integration, policy-making, the EU’s economic and monetary institutional settings, the sub-national regions and the CFSP. On the other hand the CT did introduce new institutional approaches and it would be inappropriate not to discuss, for example, ‘the double presidency’.

This book is the result of the last three years’ research into the state of the EU and, as indicated in the overview of its structure below, is structured rigidly, to give the anthology strong cohesion.

Why a Federal Approach?

[...] The French Government proposes [...] to place Franco-German production of coal and steel under a common High Authority, within the framework of an organization open to participation of the other countries of Europe [...] The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible [...] this proposal will build the first concrete foundation of a European federation which is indispensable to the preservation of peace [...]

So the words of Robert Schuman in the Paris Declaration of 9 May 1950 issued by the French government.¹ Nearly 50 years later to the day (12 May 2000) the German Foreign Minister Joschka Fischer gave a speech at the Humboldt University titled ‘From confederation to federation’. In his speech Fischer pleaded for the creation of a European federation, with strong Member States. It would be an exaggeration to claim that it was Fischer’s speech which triggered the renewed discussion on the ‘finality’ of European integration, but it was definitely an important factor.

Thus the concept of federalism has been called upon throughout the history of the Union.² Why is that so? To answer this question one has to remember that it is

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¹ In his little book ‘Pour l’Europe’ Robert Schuman develops his ideas of a federation.
² In his analysis of the EC from 1972-1987 Burgess concludes that: ‘This study has demonstrated a fundamental continuity of federal ideas, influences and strategies in the political development of the European Community during the years between 1972 and 1987’ (p. 218).
important to distinguish between federalism as a theory about how federations arise, are organized and function, and federalism as a normative approach; a political theory of action to follow which aims at creating, for example, a European federation because it is considered to be a good frame for the integration of diverse states and cultures (E pluribus unum). Of the advantages ascribed to federalism one can mention the following (Adrian Vatter in Klöti 1999, p. 80):

As the central functions of a federal order one counts the strengthened control of power in a democratic system of governance, the enhanced possibility for the population to participate in the policy process (the territorial principle), the enhanced chances of forcing through the decentralized organized interests, it is easier to secure regional interests than in a unitary state, the relieving of the central decision making authorities of pressure, strengthened protection of minorities, and the larger possibility to experiment and eventually to implement special arrangements (my translation, SD).

In addition, it is sometimes mentioned that a federal system makes it easier for regional and smaller parties to gain power (Braun 2000, p. 8), and that it may also strengthen solidarity among the citizens, as the units are smaller (Wachendorfer-Schmidt 2000, p. 2). In other words, from a normative point of view, federalism is considered to be the best approach to organizing such a culturally diverse entity as the European Union. This became clear – should anyone have doubted – in the first drafts from the Convention of the Future of Europe, where the federal principle was explicitly mentioned as a model for the treaty, but it was later removed from the text, as it was considered politically ‘too dangerous’, that is, for the Northern Europeans who are not accustomed to the term, and sometimes equate it with ‘centralism’, which is basically a contradiction in res.

It is also worth remembering that the former Soviet Union and Ex-Yugoslavia were federations, too, and that most of the advantages mentioned above hardly apply to them. Thus it is important to be aware that the state organizing principle of ‘federation’ is not ‘good’ per se, but used in a democracy it does contain the above mentioned possibilities, but also that we talk of possibilities, not conditionalities. In that sense the concept of ‘federalism’ is just like the concept of ‘regime’.

As federalism has imbued the history of the EU and directly inspired the new constitution, it will be the theoretical frame of the book. This does not indicate that the authors of this book take over the concept uncritically, but it is a concept towards which we play our intellectual ballgame: some embrace it while others will criticize it.

**Chapters to Follow**

As the book has a federal starting-point, it begins by discussing the federal tradition. The second chapter gives an overview of what constitutes the core of federalism, and contrasts it with the concept of confederation. Then follows a historic overview of the development of federal thought and action, in Europe and
the USA, ending with an attempt to distillate a European federal model. This is followed by a classification of federations, and, ending this chapter, a discussion of how federations are made.

Constitution and legitimacy are central concepts in the discussion of any organized polity. But there seem to be very large differences, for example, in how the population and the elite look at the concepts and their relationship, and there seems to be a larger difference across the EU – with the United Kingdom at one end of a continuum and Austria and Germany at the other end (Abromeit, this book, p. 37):

How can those different constitutional traditions be reconciled? And how can we explain the wide support the project of ‘constitutionalizing Europe’ has found among European politicians even though the constitutional cultures they were reared in vary so much? Was it really their primary aim ‘to institutionalize legitimate democratic government in the EU’, or were they motivated ‘rather by the need to shore up popular support for its political system’?

These questions are discussed in Chapter 3.

There may be different opinions as to whether a federal organization of a state has an impact on the policy outcome, but there is, not surprisingly, agreement that a federal organization inevitably has another kind of policy-making process than a unitary state. The aim of Chapter 4 is to analyze the policy process within federations, which may roughly be divided into two traditions: the European (cooperative) and the Anglo-Saxon (dual). The working hypothesis being that the Anglo-Saxon federations, here the US, Australia and Canada, differ significantly in their mode of policy-making from the European ones. Then the findings are compared to the Nice-EU and the CT-EU.

The EU needs to be made more effective, as was said already at the outset of the Laeken Process; perhaps because the EU’s legitimacy to a high degree depends on its output, its efficiency. Thus a number of institutional changes have been suggested, and written into the CT. A significant novelty is the creation of a ‘double-presidency’. It is obvious to analyze this new institution inter alia asking the question of a possible new President’s legitimacy. In doing so, Chapter 5 will draw upon the experiences with presidential governments in states like Austria, France and Germany.

Chapter 6 deals with economic, monetary and fiscal questions of the EU. It starts out by drawing attention to the ‘surprisingly’ tranquil development of the EMU, the reform of the stability pact and the CAP, before this is developed in the first main part under the headline ‘Current developments of the EU’s fiscal and monetary arrangements’. This part is followed by a thorough discussion of the ‘puzzle’ why ‘things are about right’, when a substantial part of academia had warned about the instability of an EMU without a full, fiscal union including substantial transfers from the richer to the poorer regions of the EU. In the conclusion the findings are related to the possible CT.
Chapter 7 analyzes the sub-national level in the EU. The regions have hardly been visible in the constitution process, or so it seems. The federalist ideology as it relates to the regional tier, and the political realities of today’s integration process will be discussed in part two. However, it is argued that the recent resurgence of regionalist ideas within the constitutional agenda relates more to the debates emerging from the broader governance debates currently ongoing both within the EU and internationally, and will be discussed in part three. The role of the Committee of the Regions in the deliberation and preparatory work in the context of preparing for the European constitution will then be discussed in part four. Later the question of the regionalization of Europe or the Europeanization of regions is discussed, before the impact of the enlargement process is analyzed.

In Chapter 8 the foreign political status of the EU is analyzed. While some contending views are caused by profoundly different analyses of EU foreign policy, other contending views can be explained by the fact that different analysts operate with different subject matters. The chapter begins by illustrating the consequences of applying different approaches. In the second part, four contending images of contemporary EU foreign policy are outlined. The third section analyzes what it takes to constitute a global player, including the question of having a constitution. In general, the chapter traces linkages between foreign policy practice, analytical reflections on practice, and the codification of certain practices.

Finally the question of the EU’s nature and institutions is analyzed from a federal perspective. What is the EU today (Nice-EU) and what would it be if the CT was ratified – we expect ‘something’ to happen, and the CT as the maximum change. Although the chapter is not a ‘summing up’ of the previous chapters, some of the findings will be included in it.

We let Patrick Riley end this chapter by condensing Leibniz’s understanding of a ‘good’ federation (1987, p. 83): ‘Successful federal systems, indeed, seem to rely precisely on the negotiation, discussion and concession which Leibniz recommends, and not just on “mandates” given ex plenitudo potestatis.’

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Federalism

Søren Dosenrode

Federal government is not always and everywhere good government. It is only at the most a means to good government, not a good in itself. (Wheare 1963, p. 34)

Introduction

This chapter should be seen as a short introduction to ‘federalism’, as this concept plays an important role in the history of the EU, and thus in this book. It starts out by giving a short analysis of the core of federalism, followed by an equally short discussion of the concept ‘confederation’ to clarify the differences between the two concepts. Then follows a historic overview of the development of federal thought and action, ending with an attempt to distillate a European federal model. This is followed by a classification of federations, and, ending this chapter, a discussion of how federations are made.

The Core of Federalism

What is federalism? The core of federalism is about two things: independence and politics, territorial politics. Creating a federation is about getting the advantages of being a greater entity, while keeping as much independence for the constituent entities as possible (Dosenrode 2003, p. 453). A Member State in a federation does not lose its identity. But federalism is also about the territorial division of power; a sharing of the state’s policy-making power between two or more levels. In a unitary state the central government has the ultimate decision-making power within all policy areas; not so in a federation.

1 I would like to thank Professor, Dr. Heidrun Abromeit and Jean Monnet Professor Knud Erik Jørgensen for comments on an early version of this chapter, and Associate Professor, Dr. Wolfgang Zank for his comments on this one.

2 Elazar defines federalism as: ‘[…] a comprehensive system of political relationships which has to do with the combination of self-rule and shared rule within a matrix of constitutionally dispersed powers’ (1987, p. 1). In other words, he expands the concept beyond states, which is a highly debatable step.