Walter Hallstein-Institut
für Europäisches Verfassungsrecht
Humboldt-Universität zu Berlin

WHI - PAPER 09/2013

The EU - a Citizens' Joint Venture

Multilevel Constitutionalism and Open Democracy in Europe

Ingolf Pernice, Berlin*

* Professor Dr. jur., Dr. h.c., chair for public law, international and European law, Humboldt-Universität zu Berlin and director of the Walter-Hallstein-Institute for European Constitutional Law (WHI) (www.whi.eu). This paper is an updated contribution to the ninth European Constitutional Law Network Conference held October 11/12, 2012 at NYU School of Law on „Retheorizing European Integration and its Public Space“. I am grateful to my research assistants Michael Schwarz and Kristin Bettge for a critical review, updating and preparing this contribution for publication in the present volume. I also owe many thanks to Sophia Weber for adapting the draft to the required form. This contribution will be published in an adapted version in: José M. Magone (ed.), Routledge Handbook of European Politics, 2014 i.E.

The EU - a Citizens' Joint Venture

MULTILEVEL CONSTITUTIONALISM AND OPEN DEMOCRACY IN EUROPE

by

Ingolf Pernice, Berlin*

* Professor Dr. jur., Dr. h.c., chair for public law, international and European law, Humboldt-Universität zu Berlin and director of the Walter-Hallstein-Institute for European Constitutional Law (WHI) (www.whi.eu). This paper is an updated contribution to the ninth European Constitutional Law Network Conference held October 11/12, 2012 at NYU School of Law on „Retheorizing European Integration and its Public Space". I am grateful to my research assistants Michael Schwarz and Kristin Bettge for a critical review, updating and preparing this contribution for publication in the present volume. I also owe many thanks to Sophia Weber for adapting the draft to the required form. This contribution will be published in an adapted version in: José M. Magone (ed.), Routledge Handbook of European Politics, 2014 i.E.

I. Introduction

2014 is the fifth year with the Treaty of Lisbon in force, and the Union so reformed has gone through a difficult period. The financial crisis has led to an economical depression, but also to new trends of scepticism and even nationalism both, in the southern countries so violently hit by the crisis and the austerity policies imposed upon them, and also in northern countries the people of which hardly accept the claims of solidarity addressed to them in turn (Pernice 2013b: 25-56). With a view also to the upcoming European elections this seems to be reason enough for re-theorizing Europe and thinking over, and explaining what is, and what basically constitutes, the European Union. Is it a Union of states only, or a Union of citizens (infra 1.)? Developing further the concept of "multilevel constitutionalism" (infra 2.) the present contribution aims at raising awareness for the role of the citizen as the real source of power and legitimacy in the European Union (infra 3.).

1. A Union of States and Citizens

In terms of political philosophy the EU is commonly described as an international or supranational organisation (Pollack 2005: 357-98; Risse-Kappen 1996: 53-80; Stone Sweet and Sandholz 1998: 1-26), an organisation *sui generis*, if not a federal state (Mancini 1998: 29-42; Sack 2005: 67-98) or an unidentified beast – *monstro simile* (Pufendorf 1994: 198-9), impossible to be defined as it slips out of your hand at each attempt to catch it? [1] Some common understanding is needed for what venture the citizens of the European Union are engaging in more and more deeply, as European politics are becoming more and more relevant for their daily life.

This is not the place, however, for rehearsing all the attempts to qualify or categorise further this specific kind of political organization which have failed to give a hint to people in- and outside Europe of what we observe taking shape

[1] Supranational Federalism, the term used by Bogdandy, Armin von (1999), Supranationaler Föderalismus als Wirklichkeit und Idee einer neuen Herrschaftsform. Zur Gestalt der Europäischen Union nach Amsterdam. Baden-Baden: Nomos, seems to most aptly describe the form the Union has taken, though this term has not (yet) got the acceptance it deserves; English version: Bogdandy, Armin von (2000), The European Union as a Supranational Federation: A Conceptual Attempt in Light of the Amsterdam Treaty. In: *Columbia Journal of European Law*, 6:27 et seq. Similarly: Koslowski, Rey (2001), Understanding the European Union as a Federal Polity. In: Thomas Christiansen; Knud Erik Jørgensen and Antje Wiener (eds.), *The Social Construction of Europe*. London: Sage. Pp. 32-49; see also the contributions in Nicolaïdis, Kalypso; Howse, Robert (2001), *The Federal Vision – Legitimacy and Levels of Governance in the United States and Europe*. Oxford: Oxford University Press.

step by step: a federation of states, a compound of states, an association of sovereign states (*Staatenverbund*), or a supranational union (Wiener and Dietz 2009). All are referring to states. But is the European Union really a matter of states, only? At least legally instead, since the very early case-law of the European Court of Justice (ECJ),[2] the individuals seem to play a role in the process of European integration. Their role is hidden behind all the state-oriented concepts, though debates on the proper protection of fundamental rights, democratic legitimacy and the principles of subsidiarity and solidarity in the EU clearly show that it is different in kind from any traditional form of transnational cooperation.

2. Multilevel Constitutionalism

Here is where the concept of multilevel constitutionalism can serve its purpose. It is not used to describe the European Union, nor is it to give this political system a categorial name. The issue is rather to develop the underlying concept for theorizing the European Union in a constitutional perspective. Since its inception the concept of multilevel constitutionalism has undergone many attempts by various authors to determine its scope and interpret its meaning and has received both acclaim and criticism[3] (Pernice 2009: 352). It is mainly the proponents of the general theory of the state (*Staatslehre*) who critically target the underlying functional concept of the constitution and its application or extension beyond the state in the postnational constellation (Habermas 2012: 21, 27, 35-6; Kirchhof 2006: 776). Others (Bogdandy and Schill 2010: 702-7) see it in the federal tradition, but criticise its "uncertain attitude toward sovereignty" (Walker 2003: 14). On an analytical note, the conceptual terminology, i.e. the use of "levels" and "multilevel", is criticized as evocating a hierarchical structure or remaining ambiguous, which diminishes its descriptive value (Cananea 2010: 83-317).[4] In a recent publication René Barents (2012: 159 et seq.) has readily criticized four pivotal premises the concept of multilevel constitutionalism rests upon.[5] Those are first the "unity in substance thesis" which holds

[2] ECJ case 26/62 – Van Gend & Loos 1963 ECR 1; case 4/64 – Costa/ENEL, 1964 ECR 585.

[3] For a survey of affirmative as well as critical assessments of the concept of multilevel constitutionalism, see Pernice, Ingolf (2009), The Treaty of Lisbon: Multilevel Constitutionalism in Action. In: *The Columbia Journal of European Law*, 15:349-408, at 352 (note 2).

[4] In this vein, the author further submits that unfortunately the concept overemphasizes the vertical dimension; as a rebuttal see Pernice, Ingolf (2006), Die horizontale Dimension des Europäischen Verfassungsverbundes. Europäische Justizpolitik im Lichte von Pupino und Darkanzali. In: Hans-Jörg Derra (ed.), *Freiheit, Sicherheit und Recht, Festschrift für Jürgen Meyer zum 70. Geburtstag*. Pp. 359 et seq.

[5] For a first reply see Pernice, Ingolf (2013), *Der Europäische Verfassungsverbund in der Bewährung – Antonio Lopez-Pina zu Ehren,* WHI-Paper 7/2013. Pp. 16-22.

that the EU constitution and the national constitutions of the Member States form a conherent and substantive whole, second the "European citizenship thesis" which argues that the EU's legitimacy can and must be traced back to the collective will of its citizens (voiced, mediated and executed through their respective national governments), third the "autonomy thesis" that presents the EU's legal order as autonomous with regard to the national legal orders, and lies at the very heart of the idea of a non-hierarchical constitutional compound in a pluralistic setting, and finally the "divided sovereignty thesis" stating that the EU and the Member States jointly bear and exercise sovereign public power. While some commentators (Mayer and Wendel 2012: 127) underscore and expound the fundamental link between multilevel constitutionalism and constitutional pluralism, others (Jestaedt 2004: 638, 662, 664), in the Kelsenian tradition of legal theory, question the possibility of a pluralistic framework in general and in particular. Neil Walker rightly distinguishes the "narrower" and a „wider" notion of multilevel constitutionalism. As a „narrower" notion it focuses on the EU context and the vertical relationship between the Union and its Member States (understood as non-hierarchical) as well as the latter's horizontal relationships, and it substitutes the concept of the constitution for the concept of the state, a concept that is more concerned with the abstract quality (constitutionalism) than the concrete entities and presents itself as centered on the citizens rather than the polity. This narrower notion, however, may well be and in fact has been explored in a "wider" sense, as, for instance, Walker does, to expand multilevel constitutionalism beyond the confines of the EU setting to canvass the application of constitutional ideals, institutions and practices beyond the state at large (Pernice 2006b: 973-1005; Walker 2010: 143-68).

3. Developing the Citizen's Perspective

The present proposition is on the basis of "multilevel constitutionalism" to submit and develop further a comprehensive understanding of the progressive construction of the Union as a divided power system, or better: as a process of "constituing" the EU multilevel structure in the original sense of the term constitution, which is derived from the Latin *constituere*, meaning: putting together, constructing, establishing.

Who are the authors and actors in this process, who is at the origin of the EU, who is able – and legitimated – to drive this process ahead? And the answer in terms of multilevel constitutionalism is: Ideally the citizens only, the citizens of the EU Member States acting through their national governments, and – directly by referendum or indirectly represented in their parliaments – to give effect to the Treaties establishing the European Union. Could there be anybody else in any democratic systems to do this?

To make it clear: In modern democracies nothing "earthly divine" (Buchwalter 2008: 495-509) or absolute is left of a state. And given the interdependence of

states and peoples in the age of globalisation or in the "postnational constellation", as Habermas (2001: 58 et seq.) put it, there is no room left for ideas like absolutism or sovereignty of states. If there is any sovereignty at all, it is the sovereignty of the people. And "people" does not mean an abstract entity, a "Volk" or nation, but has a political meaning as the individuals having decided to unite and constitute themselves as the subjects of legitimacy by organizing within a political community we typically call a "state", the citizenship of which they take. The instrument used for doing this is the constitution of that state.

We should consider the process of the constituting of Europe in the same way. The same people, citizens of their respective Member State who, through their national governments and parliaments, commonly agree upon treaties by which they constitute the EU as a supranational political entity to serve their common purposes and interests through common institutions acting on their common behalf. These citizens of the Member States, thus, are mutually granting each other a new additional identity by establishing through the EU Treaties a complementary legal status: the citizenship of the European Union.

The constitution of the European Union, thus, and its further development can be called a citizens' joint venture (Pernice 1999: 727; 2001: 166 et seq.).[6]

Emphasis is given on the citizens as the real authors and bearers of the EU not less than they are authors and bearers of their respective national legal-political orders. Both, the Member States and the EU are serving their interests, according to the competences conferred to each level of action. With this, reference can be made to the famous description of the federal system given by James Madison in the Federalist No. 46:

> "The federal and state governments are in fact but different agents and trustees of the people, instituted with different powers, and designated for different purposes." (Hamilton, Madison and Jay 1787/88: No. 46)

Article 10 TEU, manifesting the principle of representative democracy in the Union, pertains to the dual character of legitimacy and underlines the two different strands of accountability: to the European Parliament and to the national parliaments – or to the citizens directly. The provisions on democratic princi-

---

[6] Referring to Jacques Delors see also: Limbach, Jutta (2012). Es gibt keine europäische Identität. *Frankfurter Allgemeine Zeitung,* [online] 26.8.2012. Available at: http://www.faz.net/aktuell/feuilleton/debatten/europas-zukunft/jutta-limbach-ueber-europas-zukunft-es-gibt-keine-europaeische-identitaet-11868798.html. „Jacques Delors hat die europäische Integration als ein „kollektives Abenteuer" bezeichnet. Das Beiwort „kollektiv" zielt nicht nur auf die Eliten, sondern schließt die Bürger mit ein. Der Begriff „Abenteuer" hat weniger das Spielerische als vielmehr das Experimentelle im Sinn und weist auf die Ungewissheit des Ausgangs hin."

ples in the Treaty clearly indicate that the citizens are the source of legitimacy: Article 9 TEU requires the Union to "observe the principle of equality of its citizens", Article 10(4) TEU acknowledges the role of political parties at the Union level to "contribute to … expressing the will of citizens of the Union", and Article 11 TEU lays down participatory rights of the citizens including the citizens' initiative.

Conceptualizing the European Union from the citizens' perspective allows us to detect and correct some misunderstandings underlying those arguments that question the democratic legitimacy[7] and even the desirability of the Union as such:

- The conferral of competences upon the European Union would progressively extract powers from national parliaments to a degree that general elections at the national level would become meaningless.
- Further European integration would put at risk national sovereignty for Member States as the national parliaments and their governments are compelled to implement policies *in concreto*, occasionally, even without their prior consent.
- Democracy and political collective self-determination are endangered in the Member States due to the remoteness of European institutions from the citizens and a lack of democratic accountability at the European level.

If we understand the citizens to be the source of any legitimate attribution and exercise of public authority in a political system, answers to these challenges can be summarized by three principles: The principle of additionality, the principle of voluntary participation and the principle of open democracy. The first principle is about powers and sharing sovereignty, the second is about exercising sovereignty and the third is about legitimacy. All the three address, from their respective perspective, the issue of the "democratic deficit" in the Union. The principles shall be explained first, before some conclusions may be drawn for the upcoming reform of the EU.

[7] Against the alleged democratic deficit of the EU see, for instance, Moravcsik, Andrew (2002), In Defence of the "Democratic Deficit": Reassessing Legitimacy on the European Union. In: *Journal of Common Market Studies*, 40(4):603-24.

II. Powers: The Principle of Additionality

To illustrate what is meant, the example of a house may help: Having experienced serveral conflicts among the families living in the house, some felt the need to convene regularly for discussing and resolving issues of common interest. There was no room big enough for this. So they came up with the idea to construct a meeting room in an upper floor for all these purposes. The room would be open to the other families to join, subject to the acceptance of the common rules. The joint venture proved to be successful. More and more things were found to be of benefit for each of them if commonly discussed and decided under their established rules. The immediate success progressively encouraged other families to join.

We could further develop this picture to mirror the European Union, all limits conceded. What it shows, is that there are matters for the peoples of the Member States of the European Union that can be solved in common, at a *supra*-national level, more effectively than by each family individually. *Supra* – this is: meeting on the upper floor – does not necessitate hierarchy,[8] though we call it a multilevel structure. Peaceful coexistence in Europe was the first thing one people proved to be unable to ensure by herself. Other issues followed.

1. Matters beyond national reach and democratic self-determination

The principle of additionality means that the supranational structure adds to the Member States and their respective power. The European Union, thus, was made for challenges the individual Member States could not meet on their own. In effect, powers conferred upon the EU are not powers the Member States previously possessed as part of their existing powers, but they represent new competences added to those of the Member States when acting through common institutions. States would not give away their power voluntarily. Instead, their citizens, by common agreement, have found useful to establish new institutions with powers, which are additional to those of their Member States. If it is true that in democratic societies people confer powers by their constitutions upon institutions, the origin of the new powers conferred to the European Union, as well, cannot be states but citizens only. The citizens of the European Member States, throught the European Treaties, constituted and further developed a new instrument, in addition and complementary to their respective na-

[8] The Latin term *supra* may also convey the meaning of 'beyond', 'transcendent' or 'over and above'.

tion states, in order to attain the objectives the several states themselves and in isolation are unable to achieve.

Would people or politiciens accept that certain issues are decided

- at the regional level if they can be dealt with efficiently by the local authorties –
- or at the national level, if they can well be settled by the regional authorities –
- or at the European level, if Member States could take care of them as effectively as the EU?

Clearly, the answer must be: no, they would not. The reason for their refusal is to ensure that decisions are taken as closely as possible to those concerned by them. It is a question of optimizing democratic self-determination, cognizant of the differences in responsiveness of the various levels of authority. The relative influence of each citizen on what is finally decided diminishes as the number of participants increases. Thus, if democracy means peoples self-determination, the level of relative self-determination decreases with the increase of the size of the group, that is with the level of political organisation: local, regional, national, European.

On the other hand, matters decided on the level of authority which is closer to the citizen may as well engender profound external effects and affect citizens in other polities who did not have a say in these matters, so that there gapes a democratic chasm. As Jürgen Neyer recently put it:

> "Under conditions of interdependence, and in the absence of a supranational regulatory body, all democratic nation-states suffer from the structural problem that the policies of one nation impinge on the policies of others, with no country having the ability to systematically internalize these repercussions." (Neyer 2012: 4 et seq.)[9]

This pertains to the complementary nature of the EU system of dual legitimacy as the flip side of the principle of additionality. On the Union level, therefore, the structural democratic deficit emerging on the Member State level can be addressed and at least partially remedied as other constituencies gain a voice in the decision-making process in order to internalize pertinent negative externalities, so that the EU is best understood as a corrective mechanism enhancing the democratic legitimacy of governance in Europe as a whole (Neyer 2012: 68-70).

[9] Neyer outrightly states that "Europe's democratic deficit originates first of all in the Member States, not in ist supranational layer."

2. The democratic meaning of the principle of subsidiarity

The principle of subsidiarity reflects this fundamental insight. In conjunction with the principle of proportionality in Article 5(4) TEU, it is not only a criterion for the legitimate use of competences conferred upon the Union (Article 5(3) TEU), but it is the guiding principle of the architecture of competences within the European Union.[10] It is what citizens as the authors of the Treaties (should) consider when deciding upon the conferral of powers to the Union. It may be included in the integration clauses of national constitutions[11] such as Article 23(1) of the German Basic Law, and it corresponds to the principle stated in Article 1(2) TEU, that "decisions are taken as closely as possible to the citizen".

From the perspective of the citizens, thus, the principle of subsidiarity can be understood as a general rule ensuring the highest possible degree of political self-determination in a multilevel political system (Barber 2005: 305-25). And if democratic self-determination, as the German Federal Constitutional Court (FCC) recognised in the Lisbon-Judgment, is related to human dignity,[12] it so gets a prestigious rank among the founding values of the European Union enshrined in Article 2 TEU and in Article 1 of the EU Charter of Fundamental Rights.[13]

3. Sovereignty lost – or new powers gained?

If the principle of subsidiarity is taken seriously, the claim that Member States or national parliaments lost and continue to loose their powers, is ill-founded. Clearly, the ban on barriers to trade, the prohibition of discriminations on grounds of nationality, the requirements for the respect of the common principles and values of the Union and many other rules agreed upon in the Treaties restrain the political options at the national level, and even the constitutional autonomy of the Member States. In turn, the citizens gain freedoms and rights they never had before and which a Member State could not grant individually.

---

[10] On the idea of subsidiarity in the constitutional context of the EU, see in more detail Pernice, Ingolf (1996), "Harmonization of Legislation in Federal Systems: Constitutional, Federal and Subsidiarity Aspects". In: Ingolf Pernice (ed.) - *Harmonization of Legislation in Federal Systems 9*. Baden-Baden: Nomos. Pp. 20-8.

[11] For a comprehensive and comparative legal analysis of integration clauses of both the Member States and the EU see Wendel, Matthias (2011), *Permeabilität im europäischen Verfassungsrecht – Verfassungsrechtliche Integrationsnormen auf Staats- und Unionsebene im Vergleich*. Tübingen: Mohr Siebeck. P. 144 et seq., 525 et seq.

[12] GFCC, judgment of the Second Senate of 30 June 2009, para. 211 (Lisbon). English translation available at: http://www.bverfg.de/entscheidungen/es20090630_2bve000208en.html.

[13] For a comparative legal analysis of the two conceptions of human dignity pursuant to Art. 1 of the Basic Law and Art. 1 of the EU Charter, see Schwarz, Michael, Die Menschenwürde als Ende der europäischen Wertegemeinschaft? Eine realistische Perspektive auf das Schutzdefizit nach Art. 1 der Grundrechtecharta. In: *Der Staat,* 50:533-66.

This benefit could not be secured, and the Union could not function properly without functioning national democratic institutions, administrative bodies and judiciaries based upon the rule of law implementing and ensuring the proper application of European law. All this means that national authorities are now subject to new constraints and loyalty obligations, and have – at least in part – altered their function (Hufeld 2011: 118, 121-3).[14] This, however, does not necessarily take away powers from national institutions. It is the flip side of the newly established possibility to actively participate in collective decision-making that reaches far beyond one's own national borders, and it gains importance as opening up opportunities to effectively extending rights and influence the living conditions of all European citizens in the age of globalization.

4. A composed constitutional system for a multilevel political entity

The proposal, thus, is to understand the European Union as political entity that is not separated from the Member States, but comprising them, and that is composed of the Member States and the supranational institutions. The constitution of the Union, consequently, does not challenge the national constitutions, but it is based upon, and can be considered a complementary part of them. It is some sort of an extension adding new capacities for action of common interest to the benefit of the citizens – and even overcoming democratic deficits at the national level. This is why citizenship of the Union can be said to be "additional to national citizenship", as Articles 9 TEU and 20(1) TFEU emphasize. Clearly, it does not entail that Europe's citizens are schizophrenic. Rather, to quote from Goethe, two souls alas! are dwelling in their chests, because a second legal status is added to the status citizens of the Member States already have (Habermas 2012: 28-36).

Union citizenship reflects a specific belongingness or constitutional relationship to the European Union and its institutions. It means ownership of, and adherence to, the Union, in the same sense as national citizenship is the expression for ownership and adherence to the respective Member State, component and basis of the Union.

[14] With special regard to the ESM for the author even the modification of Article 136 TFEU and the establishment of the ESM have an impact of the national constitutions.

III. Participation: the Principle of Voluntariness

The foregoing shows that it would be difficult to understand European integration as posing a real threat to sovereignty. The opposite is true: from the perspective of the citizens it is an expression of their voluntary and sovereign decision providing for new opportunities of self-determination at the supranational level. The principle of voluntariness applies to both, membership to the Union and the implementation of its legislation.

1. Membership to the European Union

No country or people is forced to accede to the Union, nor was any one of the original Member States forced to participate in this joint venture. None of the existing Member States is legally bound to stay. The new provisions of Article 50 TEU, introduced by the Treaty of Lisbon, makes this plain by stating the openness for unilateral withdrawal from the Union – an option unknown to federal states. Politically though, any withdrawal of a Member State would be contrary to the idea of European integration and opposed to the common objective "of creating an ever closer union among the peoples of Europe" (Art. 1[2] TEU). It is particularly difficult to imagine Germany to withdraw from the Union,[15] for historical and political reasons, in particular for its existential interest in being embedded in a political union offering its people a hospitable environment, enduring peace, economic and social welfare and retaining influence on the global scene.

2. Implementation and the rule of law

Membership to the European Union, thus, is a voluntary decision by be people of each Member State, conceptually, from the accession to the continued membership. The "principle of voluntariness", yet, has a broader meaning and gives the European Union a particular character, distinct from any other model of political organisation. It is based upon the binding force of law instead of physical coercion. There is no European army, nor does the EU dispose of troops or deploy police forces to enforce obligations under the Treaties or secondary legislation. It is the rule of law only, and the common consent that the Union serves the common interest of all its citizens best when the commonly established rules are observed. Union law is not imposed from the out-

[15] This option is mentioned, however, in the final paragraph of the judgment of the German Constitutional Court of 12.9.2012 regarding the binding nature of the Fiscal Compact, BVerfG, 2 BvR 1390/12 - ESM, para 319 (not in the extracts English translation), available at http://www.bverfg.de/entscheidungen/rs20120912_2bvr139012.html.

side, but built into the national systems as it works "from the inside", through the national authorities giving effect to it.

3. Voluntariness and disobedience

Voluntariness includes the option for disobedience and exit. But practice shows that the system based upon the rule of law generally functions well. It is by conviction and the force of law, not by physical coercion or the threat of force that Member States including their judges and administrative bodies obey the law of the Union and give it preference even to national constitutional law. The hardest cases of disobedience seen so far came up in an area where the "Community-method" including the jurisdiction of the CJEU does not apply: economic and fiscal policies. Under the Treaties, these policies still remain "Member States' economic policies"[16]. The damage done by breaches of fiscal discipline under the Treaty in particular by France and Germany, followed unfortunately by others, cannot be measured yet. From a legal point of view, it is the absence not of physical enforcement of the rules, but an unrealistic trust on cooperation among states and the lack of effective mechanisms for judicial decision stating the breach of law and requiring correction, the present crisis must be attributed to.

4. Limits of primacy and the role of the Courts in a pluralist system

The rule of law and the quality of the European Union as a union based upon the rule of law instead of armed force, is what gives confidence to any new Member State and its people to join the EU as a civilized political entity. This implies limits to subjection, as even obedience to Union law remains voluntary. In concreto, as national Constitutional Courts have already made clear, cases may arise where a Union measure is clearly violating the national identity of a Member State as warranted in Article 4(2) TEU,[17] is evidently *ultra vires* (Article 5(2) TEU) or violating the very substance of fundamental rights of the individual (Article 6 TEU) to an extent, that the fundamental values common to the Union and its Member States (Article 2 TEU) are put into question and therefore threatening the very basis of the EU legal order. To deny application of such a measure to citizens in a Member State is not in contradiction with the principles of primacy and direct effect, as established by the Court, but rather an expression of a common responsibility typical for a non-hierarchical, plu-

[16] Art. 119(1) TFEU.

[17] See now Case C-208/09, judgment of the Court (Second Chamber) of 22 December 2009 (Sayn-Wittgenstein) [2010] ECR I-13693.

ralist system as the EU (Mayer and Wendel 2012: 105-27; Pernice 2014a; Walker 2002: 317-59). To safeguard the respect of these common values, and, in particular, human dignity and the fundamental rights of the individual is a shared responsibility of European and national authorities and, in particular, of the CJEU and the national constitutional courts, for the benefit of the citizens of the Union (Pernice 2006; Voßkuhle 2010a: 108; 2010b: 175-98).

5. Mutual constitutional stabilization

This respect – and the shared responsibility of the courts at both levels to ensure it – can be understood as a condition for the citizens of each of the Member States to agree upon the common exercise of sovereign rights by the Union institutions at a supranational level, and accept the binding force of their acting. Article 23(1) of the Basic Law clearly expresses this conditionality for developing the European Union as a basic requirement for German participation. It reflects, on the other hand, the conditions for accession and continued membership to the Union. Article 2 TEU summarizes the common values, Article 49(1) TEU states that only a European State which respects the values referred to in Article 2 TEU "and is committed to promoting them" may be accepted as a new Member State, and Articles 7 TEU and 354 TFEU set up a procedure of supervision and sanctioning in cases of "serious and persistent breach by a Member State of the values referred to in Article 2".[18] The respect of these values is not only a condition for the proper functioning of the Union.[19] These corresponding provisions at national and European level play an important role for the protection of the rights of the individuals. They form a system of mutual constitutional stabilization (Pernice 1996: 225-64) established by the people of the Member States with a view to better ensure the respect of their fundamental rights, in parallel to the European Convention of Human Rights, for all cases where a Member State might fail to observe its duties towards the individual.

[18] Since 2010, Hungary under the direction of Victor Orbán has made many legal reforms which affect the parliament, media, judiciary, constitutional court and data protection authority. Different European actors have criticized this development and have seen a threat of a serious breach of the founding principles of the Union. Finally the European Commission initiated several infringement procedures under art. 258 TFEU but disclaimed an activation of art. 7 TEU. For more details see Coman, Ramona (2013), Mechanisms of Europeanisation and Compliance in Judicial Politics: Understanding the Past and Anticipating the Future. In: *Polish Political Science Review*, 1:75-7; Scheppele, Kim Lane (2013), What can the European Commission do when Member States violate basic principles of the European Union? The Case for Systemic Infringement Actions. [online] Available at: http://ec.europa.eu/justice/events/assises-justice-2013/contributions en.htm.

[19] Democratic political processes at national level are a basis for legitimacy of representation in the European Parliament and the Council, respect of the rule of law at national level is a condition for proper implementation of Union law and the exercise by the inidividuals of their rights conferred to them under the Treaties as well as secondary legislation.

6. Voluntariness and national sovereignty

The principle of voluntariness, thus, is supported by a vested interest of the citizens, for the protection of these rights and values may be directed against this state in case of a serious violation. Arguing that this is a threat to national sovereignty would mean that the state is sovereign, not the people. The same is valid for other provisions on powers conferred to the Union for purposes beyond the reach of national authority. They may subject national authority to rules and limits, but it would be a misconception of democratic sovereignty if such constraints resulting from the common exercise of sovereign rights by supranational institutions were understood as a limit to self-determination of the people in each of the Member States. The opposite is true.

IV. Legitimacy: The Principle of Open Democracy

Democracy means collective self-government: those who are affected by acts of the public authority must have equal rights in participating in the process of determination of its policies in order to accept them as legitimate. Practice shows many ways to organize democracy, but one common denominator seems to be that the system ought to be self-referential. Insofar democracy seems to be equivalent to popular sovereignty (Grimm 2010: 35-41). Democratic legitimacy, or the recognition and acceptance of decisions by those affected by them, thus, depends on the perception that the decisions are in some sort of one's own choice, pertaining to the Rousseauean ideal of self-authorship. As there are different views and interests in each society, decisions taken by a majority are accepted as legitimate, but only if the competent institutions observe certain conditions, procedures and fundamental rights guaranteed in the constitution.

1. Democractic deficit and special EU standards of democracy

All this seems to be the case for the European Union as much as – ideally – in the Member States. Nevertheless there is a general complaint that the EU would suffer of a democratic deficit. People seem to feel that Brussels is "remote" or irresponsive, that people do not have any influence on Brussels politics and that nobody can be made accountable for the decisions taken (Weiler 2013: 111, 116). Public opinion is still split among Member States, there is no common language, nearly no European-wide public sphere (Grimm 1995: 590 et seq.).

On the other hand, it is important to see that this political analysis is not reflected in the legal analysis of the German Federal Constitutional Court. It accepts that the EU system of governance meets the requirements of democracy, at least those laid down in the German Basic Law. Yet, this view is based upon the assumption that democratic legitimacy for European policies ultimately

relies upon the national parliaments, while the European Parliament is not considered sufficiently democratic for taking this role; rather, it plays a supplementary role. The reason for this statement is a lack of equality due to the principle of degressive proportionality (Article 14 (2) TEU). The weight of one vote of a citizen of Malta or Cyprus casting her ballot counts twelve times as much as that of a German citizen. As long as legitimacy can be considered as derived from the national parliaments, however, and as long as the Union is not a federal state to which the criteria traditionally applicable to states would apply, the German Federal Constitutional Court does not see a reason for judging the EU undemocratic.[20] This judgment is equivalent to say that the European Parliament would not be a democratic body able to providing legitimacy to the Union policies. The Court has confirmed its critical attitude in its judgment on the 5 per cent threshold for parties competing in federal elections.[21] It has earned lots of criticism for so denying the very parliamentary quality of this institution (Schönberger 2009: 535-58; Thym 2009: 559-68).

This is not the place for further commenting that jurisprudence regarding the specific democratic powers of the European Parliament (Nettesheim 2010: 119). As rightly stated by the German Constitutional Court, the European Union is not a state.[22] Consequently, European legislation and policies may follow functionally equivalent democratic principles as correspond to its specific structure. Democracy within the Member States would not be affected, because even if the principles applied at the European level would not meet the standards for national policies, it is not possible to argue a democratic deficit as long as the purposes of the decisions taken could not effectively be achieved also at the national level.

As intimated above, this guaranteed by the principle of subsidiarity, for if the principle of subsidiarity is taken seriously, only such matters are decided at the European level, as cannot, or can not effectively be dealt with on the Member State level. If a matter is out of reach for national measures – and to deal with this is what the EU was established for – other rules for democratic legitimacy must be accepted if non-action is not the desired choice.

---

[20] GFCC, judgment of June 30, 2009 – Lisbon, paras. 263 et seq., 278 et seq., English version available at: http://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html. But see for the circularity of the argument Halberstam, Daniel; Möllers, Christoph (2009),The German Constitutional Court says "Ja zu Deutschland!". In*: German Law Journal*, 10:1241 et seq.

[21] GFCC, judgment of November 9, 2011, para. 118, available at:

http://www.bverfg.de/entscheidungen/cs20111109_2bvc000410.html.

[22] GFCC, judgment of June 30, 2009 – Lisbon, paras. 266 et seq.

2. Enhancing democracy in the European Union

The question is therefore how to organize the institutional framework and the decision-making processes at the Union level in order to meet to the greatest possible extent the fundamental democratic requirement of self-government.

For determining the requirements of democracy at the Union level, multilevel constitutionalism comes into play again, and it seems to be appropriate to take again the perspective of the citizens. If they have chosen not to copy the model of a federal or centralized state for organizing their common interests at the European level, but to establish a new kind of supranational structure of public authority, based upon, complementary to, and – for implementation of the policies – dependend upon, their national institutions, democratic processes for European policies cannot be conceptualized in isolation from national democratic processes. Rather, in some way, they are part of them, and their extension towards a supranational convergence and integration finally leads to the expression of one European political will. The complexity of such processes cannot be overlooked, in particular if the logic of democratic equality – one man, one vote – has to be balanced against the logic of federal diversity and the national identity of the Member States. Both, the equality of the Member States guaranteed under Article 4(2) TEU and the equality of the citizens guaranteed under Article 9 TEU are mutually restrictive in a Union of citizens and states. As long as the states are considered to be a primary factor and the structural basis of the European Union, and there is no reason to depart from this assumption, innovative ways need to be found to ensure that the virtues of the democratic principles are manifested in practice.

3. Taking the citizens seriously – democratic empowerment in the EU

At this juncture, it is time to come back to what has been said above about dual citizenship in the composed constitutional architecture of the Union. Each person is both, a national and a Union citizen, subject of his state and subject of the Union. This duality of her political status and identity materializes in the dual path for democratic legitimacy and control defined in Article 10 TEU: The citizens of the Union are represented in the European Parliament and – as national citizens – "in the Council by their national governments, themselves democratically accountable either to their national Parliaments, or to their citizens" (Article 10(2) subpara. 2 TEU). Read together with Article 11 TEU, dealing with participative democracy in the Union, this provision underscores that the Union is not (only) a matter for states and governments, but clearly and primarily a matter of the citizens. It seems to be worthwhile to look closer at the details of these provisions.

First, it is important to see that Article 10(3) TEU guarantees the citizens the "right to participate in the democratic life of the Union". This provision also requires that decisions of the Union "shall be taken as openly and as closely as

possible to the citizen" in the democratic spirit of the subsidiarity principle and responsive governance. These are fundamental conditions for the effective participation of the citizens at the European level and, thus, their right to take control of the European policies at large, both ways: by means of their national parliaments, to which their governments are accountable, and directly through the European Parliament to which the European Commission is accountable.

Second, openness of the political process means transparency in the sense of Article 15 TFEU, as underlined by the fundamental right of access to documents in Article 42 of the EU Charter of Fundamental Rights. But it also includes that the opinions of the citizens are heard and taken seriously, and this is what Article 11 TEU further spells out. The provision not only establishes the citizens' initiative (para. 4), but more importantly, it lays down a general obligation of the institutions of the Union to "give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of the Union" (para. 1), as well as to "maintain an open, transparent and regular dialogue with representative associations and civil society" (para. 2).

4. Openness and closeness: The potential of citizens' participation

The democratic potential of these provisions remains yet to be explored. They are made to encourage citizens, to allow them engaging in a public discourse, also to be aware of policies developed by the Union's institutions and to gain an impact in substance. It offers opportunities for each individual to participate, to make her views known, and ultimately, to make a difference. If, as already quoted from Article 10(3) TEU, "decisions shall be taken as openly and as closely as possible to the citizens", the Treaty so not only enshrines the principle of open democracy but further, as already intimated, the principle of subsidiarity as a democratic principle. But closeness may be understood, in this chapter on democratic principles of the Union, in another sense, too: where people have full access to information, where decision-making is a transparent process and people have a real say – could we not conclude that they may feel close to, or even part of the political process? Read in conjunction with the provision for the equality of citizens of the Union (Article 9 TEU), open democracy in the Union could even qualify for a basic requirement which the German Constitutional Court found was missing for the composition of the European Parliament.

Except for Sweden, where freedom of information, transparency and access to official documents are constitutionally recognized since 1766, the EU acknowledging those rights, seems to be ahead of its Member States in Europe and, arguably, worldwide. The idea is old: "Information is the currency of democracy", is a saying attributed to *Thomas Jefferson* (Thomas Jefferson Monticello). With its Directive 90/313 on the freedom of access to information on

the environment[23] the European Union introduced provisions on open access, unknown so far in many Member States, as early as in 1990. The concept was adopted worldwide, upon a European initiative, in 1992 at the Earth-Summit in Principle 10 of the Rio-Declaration[24] and concretized later as pillar one of the Aarhus-Convention of 1998.[25] It was successful and became binding law for the European institutions under the "transparency"-regulation 1049/2001,[26] it was recognized as a general principle by the Council of Europe Convention on Access to Official Documents of 2011[27] as well as, at the international level, by the international Open Government Declaration of 2011.[28] Moreover, it made its way into German law finally by the Freedom of Information Act in 2006.[29]

5. Freedom of information and the internet: open democracy in Europe

This remarkable career of an old concept substituting the "*arcana imperii"* by principles of open democracy has caused a real "change of paradigm" at least in Germany (Schoch 2012: 23, 24). Having had its origin in the EU, the principles of freedom of information and transparency are now widely recognized as essential requirements of democracy (Callies 2011: Art. 1, No 75 et seq.) and their recognition seems to have an impact on the relationship of the citizens to public authorities and the concept of the state at large (Pernice 2014b).[30]

---

[23] Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment. OJ L 158, 23 June 1990, pp. 56–8.

[24] Rio Declaration on Environment and Development (1992) principle 10: "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available..." Available at http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163.

[25] UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), Articles 4 and 5, 25 June 1998. Available at: http://www.unece.org/env/pp/treatytext.html.

[26] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. OJ L 145, 31 May 2001, pp. 43–8.

[27] Council of Europe Convention on Access to Official Documents, 8 June 2009. Available at: http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=205&CM=1&CL=GER.

[28] Open Government Partnership, September 2011 [online]. Available at: http://www.opengovpartnership.org/open-government-declaration.

[29] Gesetz zur Regelung des Zugangs zu Informationen des Bundes (Informationsfreiheitsgesetz - IFG), Federal Act Governing Access to Information held by the Federal Government (Freedom of Information Act), 5 September 2005. Federal Law Gazette I: P. 2722.

[30] A parallel development is taking place in the United States, starting with the Freedom of Information Act [online], 1966 (for the application see: http://www.state.gov/m/a/ips/), up to the new Open government initiative of the Obama administration started in 2009 with the Memorandum on Transparency and Open Government, see for further development: http://www.whitehouse.gov/open/about.

For the European Union, the adoption of the principles of open democracy came hand in hand with the enhanced use of the opportunities offered by the internet. Thanks to these technologies, an active information policy and enhanced public dialogue has been established on legislative proposals or even in processes of a constitutional nature involving civil society as well as all interested citizens, as practiced for the first time on the "futurum" website of the European Constitutional Convention from 2001 to 2004. More and more information on the activities of the EU institutions is published online, including the prospective publication of all relevant documents regarding legislative processes in "prelex".[31] The new Regulation 211/2011 on the European Citizen's Initiative,[32] adopted under Article 11(2) TEU, provides for electronic collections of signatures through a software offered free of charge by the Commission.[33]

There is a potential of new political control and active participation for the citizens in European policies through national channels and directly in an open dialogue with the Union institutions. In light of these circumstances and given the fact that these new opportunities of involvement are made use of, it deems hardly convincing that democracy and political self-determination in the Member States are endangered due to the remoteness of European institutions from the citizens and the absence of democratic accountability at the European level.

V. Conclusions: For A More Democratic European Union

A composed constitutional system with a multilevel structure, the principles of additionality, voluntariness and open democracy and the assumption of a multiple political identity of the citizens – is this sufficient to describe the European Union as a democratic organisation of public authority?[34]

Joseph Weiler (2013: 25) most recently pointed out to the European Parliament that EU democracy is a democracy without people, given the lack of representation and the lack of accountability. Representation is about a real political choice among not only persons but also political programs for the electorate.

---

[31] PreLex, Monitoring of the decision-making process between institutions [online]. Available at: http://ec.europa.eu/prelex/apcnet.cfm?CL=en.

[32] Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative. OJ L 2011 65/1.

[33] For this and the practical application see: http://ec.europa.eu/citizens-initiative/public/welcome?lg=en.

[34] For the following thoughts see the more exhaustive study in: Pernice, Ingolf; Wendel, Mattias; Otto, Lars; Bettge, Kristin; Mlynarski, Martin; Schwarz, Michael (2012), *A Democratic Solution to the Crisis. Reform Steps towards a Democratically Based Economic and Financial Constitution for Europe*. Baden-Baden: Nomos.

Accountability means, that if there is a real failure of a policy at the EU level, somebody must be there to take responsibility. The democratic right of the citizens "to through the scoundrels out" is not developed (Weiler 2013: 116). If the citizens are not given this choice regarding a bad government, why then would they have a reason to participate in European elections? Is the European Union democratic?

Does the inequality of the votes of the citizens of the Member States exclude to accept, that this parliament is a democratically elected body providing, in accordance of Article 10 (2) TEU – as one pillar of democratic representation in a system of dual legitimacy – European policies with democractic legitimacy? Jürgen Neyer (2012: 6) so suggests that the Union is built "on the principle of difference, not of equality, among citizens", that it is "not undemocratic by mistake and it is not a democracy in the making," but "rather, it is a deliberately different entity that intentionally violates one of the constitution principles of democracy".[35] For him (2012: 56), thus, "the concept of democracy emphasizes attributes of a polity that are irreconcilable with supranationalism".

Though the tension with the democratic principle in classical terms seems to be clear, it is questionable, however, whether it can or should be abandoned at all in a supranational setting like the EU. This would, first, be contrary to the conditions set for the participation of Germany in the development of the European Union in Article 23 (1) of the Constitution. The question is, second, whether the inequality of weight of votes under the principle of degressive proportionality is not compensated by the additional power a greater group of deputies the bigger Member States have in the European Parliament can actually exercise. Against the reservations made with regard to the unequal weight of votes from small and large Member States, thus, it would be for political scientitsts to find out what is the real power structure within the European Parliament composed according to the principle of degressive proportionality. If at all national representation played a role in the intraparlamentary processes, what does it mean to have six Members of Parliament from one Member State only with regard to its representation in the diverse committees, against 96 Members of Germany spread over all the committees with a strong group and, therefore, strong political influence and good chances to be elected to leading positions in each of them? To what extent, under such conditions, does the greater group-power (if it was admitted and exercised) as well as the fact that each German MEP represents about a million and not one tenth of this amount of citizens, outweigh in

[35] This seems to be in accordance with the analysis of the GFCC, supra n. 20, paras 219 et seq.

real terms the smaller relative representation and, therefore, influence of each of the German citizen?

What reverberates in these lines is that the European Union is unique, and so is what democracy can mean for it. The real working of the political processes need far more study. As can be seen at present, third, transparency, openness and participative elements play a more important role in the Union as in the Member States. These principles too have to be taken into account when considering apparent lacks of equal voting and imbalanced parliamentary powers. The need for these attributes, finally, is different from what democracy requires at the national level, for the lack of coercive powers at the EU level, the principle of implementation by the national authorities and the decisive role of the national governments in the legislative processes are guarantees for effective control of the exercise of public authority by national institutions the legitimacy of which is not at stake. There is a very effective vertical separation of powers ensuring that the individual freedoms are not at risk. What the German Federal Constitutional Court understands as "overfederalisation",[36] may amount to a necessary safeguard to the benefit of the citizens particularly of smaller Member States in the multilevel system of governance that is the European Union.

To make representation and accountability more effective, however, a first step towards a solution could be seen in merging the office of the President of the European Council with that of the President of the European Commission. Such a double-hatted President is not excluded under the terms of the existing Treaties; Article 15 (6), subpara. 3 TEU has expressly been given an open wording so to allow for this merger of functions. The President would have an important political role and her election and political control by the European Parliament would enhance her political accountability and give the European Union a more political and personal face[37] (Pernice 2003: 57-84). If political parties at the European level present their respective candidate for this office,[38] combined with a specific political program, the citizens of the Union would

---

[36] GFCC, supra n. 20, paras. 290, 292.

[37] See my proposals already in Pernice, Ingolf (2003), "Democratic Leadership in Europe: The European Council and the President of the Union". In: José María Beneyto Peréz (ed.), *El Gobierno de Europa. Díseno institucional de la Unión Europea. The Government of Europe, Institutional design for the European Union*. United States: Dykinson, S.L. – Libros. Pp. 57-84. Also published in Beneyto, José María; Pernice, Ingolf (eds.) (2004) - *The Government of Europe – Institutional Design for the European Union*. ECLN-Series vol. 3. Baden-Baden: Nomos. Pp.31-53. Also available as WHI-paper 1/03.

[38] Eurobarometer of August 2012 shows that more than 50 % of the citizens believe that they would be more encouraged to participate in European elections if the party groups presented each their candidate for the office of President of the Commission.

have a choice and might find more incentives to participating in the elections. Political party groups are actually preparing to make this happening for the first time with the European elections of 2014, while a double-hattet president of the European Council is not in sight yet.

Such a development would, however, not amount to a system of parliamentary democracy with a government elected by and dependent of a majority (coalition?) in the European Parliament. The present division of powers among the European institutions does not permit the president – even a "double-hatted" president – to implement without compromises her policies in cases where the majority of the Member States' governments do not have the same political couleur. But it would provide this president more visibility and political weight, and so enhance accountability and the legitimacy of Union policies.

Complementary, more participatory forms of open democracy based upon the effective involvement of the citizens of the Union taking ownership of their European "joint venture", as envisaged by the provisions of Article 11 TEU, nevertheless, are key for strengthening democracy in the European Union and must be explored in more depth. On the basis of an "informed" open public debate over diverse political programs presented at the electoral campaigns for the European elections, the citizens of the Union would be given real political choices and their votes could be of great impact both, on the policies of the Union and on their democratic legitimacy.

References

Barber, Nicholas W. (2005), The Limited Modesty of Subsidiarity. In: *European Law Journal*, 11(3):308-25.

Barents, René (2012), "The Fallacy of European Multilevel Constitutionalism". In: Matej Avbelj; Jan Komárek (eds.) - *Constitutional Pluralism in the European Union and Beyond*. Oxford: Hart Publishing.

Bogdandy, Armin von; Schill, Stephan (2010), Die Achtung der nationalen Identität unter dem reformierten Unionsvertrag – Zur unionsrechtlichen Rolle nationalen Verfassungsrechts und zur Überwindung des absoluten Vorrangs. In: *Heidelberg Journal of International Law*, 70:701-34.

Buchwalter, Andrew (2008), Hegels Begriff des Staates als „Irdisch-Göttliches". In: *Deutsche Zeitschrift für Philosophie*, 56:495-509.

Calliess, Christian; Ruffert, Matthias (eds.) (2011), EUV-AEUV Kommentar. Forth edition. München: C.H. Beck.

Cananea, Giacinto della (2010), Is European Constitutionalism Really "Multilevel"? In: *Heidelberg Journal of International Law*, 70:283-317.

Grimm, Dieter (1995), Braucht Europa eine Verfassung? In: *Juristenzeitung*, 50(12):581-90.

Grimm, Dieter (2010), Souveränität – Herkunft und Zukunft eines Schlüsselbegriffs. Berlin: Berlin University Press.

Habermas, Jürgen (2001), *The Postnational Constellation – Political Essays*. Max Penskx (transl. and ed.). Cambridge*:* MIT Press.

Habermas, Jürgen (2012), *The Crisis of the European Union: A Response*. Cambridge, MA: Polity Press.

Hamilton, Alexander; Madison, James; Jay, John (1787/88), *The Federalist Papers*. Federalist No. 46.

Hufeld, Ulrich (2011), Zwischen Notrettung und Rütlischur der Umbau der Wirtschafts- und Währungsunion in der Krise. In: *integration*, 34(2):117-31.

Jestaedt, Matthias (2004), "Der Europäische Verfassungsverbund - Verfassungstheoretischer Charme und Rechtstheoretische Insuffienz einer Unschärferelation". In: Rüdiger Krause et al. (eds.) – *Recht der Wirtschaft und der Arbeit in Europa: Gedächtnisschrift für Wolfgang Blomeyer*. Berlin: Duncker & Humblot. Pp. 637-74.

Kirchhof, Paul (2006), "The Legal Structure of the European Union as a Union of States". In: Armin von Bogdandy; Jürgen Bast (eds.) - *Principles of European Constitutional Law*. Oxford: Hart Publishing. Pp. 765-802.

Mancini, Federico (1998), Europe: The Case for Statehood. In: *European Law Journal*, 4:29-42.

Mayer, Franz C.; Wendel, Mattias (2012), "Multilevel-Constitutionalism and Constitutional Pluralism. Querelle Allemande ou Querelle d'Allemand?". In: Matej Avbelj; Jan Komárek (eds.) - *Constitutional Pluralism in the European Union and Beyond* Oxford: Hart Publishing. Pp. 105-27.

Nettesheim, Martin (2010), Die Karlsruher Verkündigung – Das Bundesverfassungsgericht in staatsrechtlicher Endzeitstimmung. In: *Europarecht*, Beiheft 1: 101-22.

Neyer, Jürgen (2012), The Justification of Europe – A Political Theory of Supranational Integration. Oxford: Oxford University Press.

Pernice, Ingolf (1995), "Bestandssicherung der Verfassungen: Verfassungsrechtliche Mechanismen zur Wahrung der Verfassungsordnung". In: Roland Bieber; Pierre Widmer (eds.) - *L'espace constitutionnel européen / Der Europäische Verfassungsraum / The European Constitutional Area.* Zürich: Schulthess Juristische Medien. Pp. 225-64.

Pernice, Ingolf (1999), Multilevel Constitutionalism and the Treaty of Amsterdam. In: *Common Market Law Review*, 36:727.

Pernice, Ingolf (2001), Europäisches und nationales Verfassungsrecht. In: *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer*, 60:148-88.

Pernice, Ingolf (2006a), *Das Verhältnis europäischer zu nationalen Gerichten im europäischen Verfassungsverbund*. Berlin: de Gruyter. Also available as WHI-Paper 5/07 (www.whi.eu)

Pernice, Ingolf (2006b), "The Global Dimension of Multilevel Constitutionalism: A Legal Response to the Challenge of Globalisation". In: Pierre-Marie Dupuy; Bardo Fassbender; Malcolm N. Shaw; Karl-Peter Sommermann (eds.), *Völkerrecht als Weltordnung. Common Values in International Law. Festschrift für / Essays in Honour of Christian Tomuschat.* Kehl-Strasbourg-Arlington: N.P. Engel. Pp. 973-1005.

Pernice, Ingolf (2013a), Der Europäische Verfassungsverbund in der Bewährung – Antonio Lopez-Pina zu Ehren, *WHI-Paper* 7/2013, pp. 16-22

Pernice, Ingolf (2013b), "Solidarität in Europa. Eine Ortsbestimmung im Verhältnis zwischen Bürger, Staat und Europäischer Union". In: Christian Callies (ed.), *Europäische Solidarität und nationale Identität. Überlegungen im Kontext der Krise im Euroraum*. Tübingen: Mohr Siebeck. Pp. 25-56.

Pernice, Ingolf (2014a), "Autonomy of the European Legal Order – Fifty Years after Van Gend & Loos". In: Antonio Tizzano et al. (eds.) - *50ème Anniversaire de l'arrêt 50th anniversary of the judgment in Van Gend en Loos, 1963-2013*, Actes du Colloque Luxembourg, 13 mai 2013 – conference proceedings Luxembourg, 13 May 2013, Luxembourg: Office des Publications de l'Union européene, Pp. 55-80.

Pernice, Ingolf (2014b forthcoming), "Verfassungs- und europarechtliche Aspekte der Transparenz staatlichen Handelns". In: Alexander Dix et.al. (eds.), *Informationsfreiheit und Informationsrecht - Jahrbuch 2013*, Berlin: Lexxion Verlagsgesellschaft, Pp. 17-34.

Pollack, Mark A. (2005), Theorizing the European Union: International Organization, Domestic Polity, or Experiment in New Governnance? In: *Annual Review of Political Science*, 8:357-98.

Pufendorf, Samuel von (1994), "Die Verfassung des deutschen Reiches". In: Horst Denzer; Hans Meier; Michael Stolleis (eds.) - *Bibliothek des deutschen Staatsdenkens*. Berlin: Insel Verlag. Bd.4:198-9.

Risse-Kappen, Thomas (1996), Exploring the Nature of the Beast: International Relations Theory and Comparative Policy Analysis Meet the EU. In: *Journal of Common Market Studies,* 34:53-80.

Sack, Jörn (2005), Die Staatswerdung Europas – Kaum eine Spur von Stern und Stunde. In: *Der Staat*, 44:67-98.

Schoch, Friedrich (2012), "Der Zugang zu amtlichen Dokumenten nach Europarecht". In: Alexander Dix et.al. (eds.), *Informationsfreiheit und Informationsrecht. Jahrbuch 2011*, Berlin: Lexxion Verlagsgesellschaft, Pp. 23-59.

Schönberger, Christoph (2009), Die Europäische Union zwischen „Demokratiedefizit" und Bundesstaatsverbot. Anmerkungen zum Lissabon-Urteil des Bundesverfassungsgerichts. In: *Der Staat*, 48:535-58.

Stone Sweet, Alec; Sandholz, Wayne (1998), "Integration, Supranational Governance, and the Institutionalization of the European polity". In: Alec Stone Sweet; Wayne Sandholz (eds.) - *European integration and Supranational Governance*. Oxford: Oxford University Press. Pp. 1-26.

Thomas Jefferson Monticello [online]. Available at: http://www.monticello.org/site/jefferson/information-currency-democracy-quotation [Accessed: 22 September 2013]

Thym, Daniel (2009), Europäische Integration im Schatten souveräner Staatlichkeit. Anmerkungen zum Lissabon-Urteil des Bundesverfassungsgerichts. In: *Der Staat*, 48:559-86.

Voßkuhle, Andreas (2010a), Der europäische Verfassungsgerichtsverbund. In: *Neue Zeitschrift für Verwaltungsrecht*, 29:1-8.

Voßkuhle, Andreas (2010b), Multilevel Cooperation of the European Constitutional Courts: Der Europäische Verfassungsgerichtsverbund. In: *European Constitutional Law Review,* 6(2):175-98.

Walker, Neil (2002), The Idea of Constitutional Pluralism, In: *Modern Law Review*, 65(3):317-59.

Walker, Neil (2003), "Late Sovereignty in the European Union". In: Neil Walker (ed.) – *Sovereignty in Transition*. Oxford: Hart Publishing. Pp. 3-32.

Walker, Neil (2010), "Multilevel Constitutionalism: Looking Beyond the German Debate". In: Kaarlo Tuori and Suvi Sankari (eds.) - *The Many Constitutions of Europe*. Farnham, UK: Ashgate. Pp. 143-68.

Weiler, Joseph H.H. (2013) Democracy without the People: The Crisis of European, in: Petr Novak (ed.), *Challenges of multi-tier governance in the European Union. Effectiveness, efficiency and legitimacy*. Compendium of notes. Pp. 111-23. Available at: http://www.whi-berlin.eu/tl_files/documents/Multi-tier%20governance%20in%20the%20EU.pdf

Wiener, Antje; Dietz, Thomas (2009), *European Integration Theory*. Oxford: Oxford University Press.