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THE CASE FOR A CONSTITUTIONAL REFORM OF THE EUROPEAN UNION: FROM THE CREATION OF A 'FEDERAL' BUDGET TO FULL CO-DECISION BETWEEN COUNCIL AND PARLIAMENT. THE ROLE OF A STUDY GROUP

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The case for a Constitutional reform of the European Union: From the creation of a 'federal' budget to full co-decision between Council and Parliament. The role of a study group[*]

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Summary; I. The question of full co-decision between the Council and Parliament; II. The federal nucleus and the creation of a federal European army; III. The federal nucleus and the aims of a single European foreign policy; IV. A Europe of concentric circles; V. The nature of European constitutionalism; VI. A constitutional moment; VII. Aims and implementation of a study group on the European constitutional process; VIII. The functioning of the study group; IX. Expected impact of the activities of the study group; Selected Bibliography.

The acceleration of the process of European unification, consequent to the significant increase in the Commission's spending capacity, poses the question of the creation of a real federal budget, available to an executive responsible in front of two branches of a Parliament with equal powers. The fundamental issue to be faced, on which the entry of the unification process into its final phase – or its failure – depends, appears to be that of the full co-decision between the Council and Parliament.

The creation of the constitutional organs characteristic of a federation cannot, however, be achieved – as the functionalists and the theorists of spill-over advocated – by means of a gradual transfer of competences from the states to the Union, but by a constitutional act. Both the functionalist approach and the classic Community method are becoming obsolete. These methods are bound to fail, not just due to a lack of popular support, but because they are unable to deliver the public goods which Europeans expect to receive from a fully-fledged government.

There is a real danger that the European Union risks being delegitimized by the current democratic deficit. This deficit is not simply the effect of the limited role that democratic representation plays within the institutional mechanism of the Union, but of a certain indifference and disinterestedness by national leaders and politicians in general, towards the complexity of constitutional policy. The

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creation of a study group based on the Chatham House model could play a pioneering role in placing the European Parliament at the centre of the constitutional process.

I.   The question of full co-decision between the Council and Parliament

The acceleration of the process of European unification, consequent to the creation of a common European debt (the Quantitative Easing by the European Central Bank) and a common deficit (the significant increase in the Commission's spending capacity with the Next Generation EU and the issue of Eurobonds), poses the question of the reform of the European Union's decision-making process towards the full co-decision between the Council and Parliament.

Within the European Union, the Council embodies the confederal principle, while the Parliament embodies the federal one. In fact, the European Parliament historically played the role of the democratic transformation factor of the Union, developing the tendency to affirm a new principle of legitimacy – international democracy – together with the old legitimacy, which is based on established powers. In this regard, it is possible to compare the process of democratization of the European Union to the historical transition from absolute monarchy to parliamentary and constitutional monarchy, which took place in Europe from the eighteenth to the nineteenth centuries.

The role of Altiero Spinelli within the European Parliament was precisely that of balancing the powers between the Council and Parliament. Spinelli's first attempt to build a European constitutional union matured in the early 1950s, in connection with initiatives to create a European alternative (the European Coal and Steel Community and the European Defence Community) to the industrial reconstruction and the remilitarization of Germany. The action by Spinelli set in motion a constituent process in which the *ad hoc* Assembly (the enlarged ECSC Assembly) was given the mandate to elaborate the Statute of the European Political Community, the political body responsible for the European army.

Spinelli's second attempt was accomplished in the early 1980s by the European Parliament, which with the Draft Treaty of 1984 played a constituent role, becoming in fact the federator of Europe. Since then, the European Parliament has progressively reduced its decision-making imbalance in front of the Council, and this has certainly not been the case for a royal concession by the Council, but for the political struggle engaged by the Parliament towards the Council. Thanks to Spinelli and to that great battle, the Parliament has not only progressively increased its powers, but has also provided a basis of democratic legitimacy to the treaties that followed since. In fact, it has been attested that the Lisbon Treaty includes ninety per cent of the 1984 Draft Treaty contents.[1]

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[1]   For an analysis, see Daniela Preda, *Storia di una speranza. La battaglia per la CED e la federazione europea (1950-1952)* (Milan: Jaca, 1990).

The *de facto* creation of a federal budget has been possible because a federal nucleus already exists within the European Union. This is the Franco-German union, which has a single currency (the euro), the core of a common army (the Franco-German Brigade, part of the Eurocorps), a common foreign policy (sanctioned by the Élysée Treaty of 22 January 1963, renewed and strengthened by the Aachen Treaty of 22 January 2019), and integrated ministerial and administrative bodies. It was precisely this federal nucleus that gradually exercised the strength of the magnet towards other Continental states and secured the overcoming of crises in the relations between European states, and their settlement in the subsequent phases of the European unification process. The European Federal Union will be born from its enlargement. The recent signature in Rome between France and Italy of the Quirinale Treaty represents a significant step towards that direction, with the inclusion of Italy within the federal nucleus.[2]

II.   The federal nucleus and the creation of a federal European army

The progressive enlargement of the federal nucleus (Spain and Belgium could be the next candidates) would create a system of government in concentric circles, in which the inner ring, the European Federal Union, would come to play, with respect to the external one, the present European Union, the function of a propulsive, cohesive, and attractive force. The euro would thus play the role of an instrument for the development and stability of the Union's economy as a whole, exerting a formidable force of attraction for the countries of the Union towards the federal nucleus, comparable to that historically exercised by the Union towards its neighbouring countries. Among the competences of the European Federal Union, there should be the military, with the creation of a European army, formed not on the basis of the contingents by the member states, but of volunteers incorporated in an autonomous structure, accountable to the federal government.

The withdrawal of American forces from Afghanistan and the consequent seize of Kabul by Talibans, raise fundamental questions to European countries: 1) For how long will the Americans continue to guarantee the defence of the European Union's borders and vital interests, and bear its costs? 2) For how long will the Americans continue to guarantee the stability of the Mediterranean region and the Middle East? 3) For how long will the Americans be willing to lead the 'Atlantic System' (institutionalized in the G7, and based on the principle of global preponderance of military, naval and air forces), which since 1945 has guaranteed an era of global truce, a system that has successfully prevented a worldwide spread of a local conflict?

These are not academic questions. There are two souls which have always coexisted in the United States – an isolationist soul, represented mainly (but not solely) by the Republicans, and an interventionist soul, expressed mostly by the Democrats. It has been almost exclusively Democratic

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[2]   For a discussion, see Corine Defrance and Ulrich Pfeil, *Der Élysée-Vertrag und die deutsch-französischen Beziehungen 1945–1963–2003* (Munich: Oldenbourg, 2005); Ulrich Krotz, *Shaping Europe: France, Germany, and Embedded Bilateralism from the Elysee Treaty to Twenty-First Century Politics* (New York: Oxford University Press, 2015).

presidents (T. Roosevelt, Wilson, F. D. Roosevelt, Kennedy, Johnson, and Clinton) who have engaged the United States in interventionist policies. Eisenhower and G. W. Bush represent exceptions over the course of a century. Trump's victory signified the revenge of the isolationist soul over the interventionist one, similar to that which occurred in 1919 with the failure of the American Senate to ratify the Treaty of Versailles (and in particular the Anglo-American Treaty of Guarantee on the North-Eastern borders of France, the precursor of NATO), setting in motion the process that moved inexorably towards the Second World War. American withdrawal from Afghanistan and possibly, in the near future, from the Mediterranean region, is an unequivocal sign of the actual steady growth of isolationists forces within the United States. Should they have the upper hand on the interventionist one, Europe would be the first region of the world to dramatically pay for it, as happened after 1919.

The question of the defence of the European Union's borders and vital interests is inescapable. Today more than in recent past, the European nations appear as "dust without substance," as Luigi Einaudi clearly observed in 1954. The fact of living in a geocentric world of nations leads us to consider one's own nation as the centre of our political universe, the fixed point around which we imagine that all other nations, all the problems and the events that are outside of our nation, rotate. While living in a Copernican world, our political and social representations have remained Ptolemaic. There is not the slightest hope, Emery Reves lucidly pointed out, that we can solve any of the vital problems of our generation until the Europeans rise above the nation-centric dogmatic conceptions, and pool forces to better organize our defence as equal partners with the Americans. The time has come for Europeans to face their responsibilities.[3]

After the accomplishment of a Single Market and currency, European countries cannot escape from the creation of a single defence and foreign policies. As part of its common security and defence policy, the Union has conducted five military operations in Macedonia, Bosnia and Herzegovina, the Democratic Republic of the Congo, Chad, and the Central African Republic, with the express purpose of contributing to resolving violent conflicts beyond its borders. The convergence of European military cultures since the end of the Cold War is linked to changes in military education. The officers are now jointly trained with civilians and civil servants, in clear discontinuity with respect to previous generations of European officers, and with an ever-increasing uniformity across the borders of the member states.

The achievement of a Single European Defence could be accomplished in 3 stages:

1) **The immediate enlargement of the existing Franco-German Brigade** to include one mechanised Division by EU's member-States, willing to participate to the creation of the Single European Defence (SED). It will be the nucleus of the Single European Army (SEA). The Army General Staff (AGS) would be composed by a representative from each member state participating and chaired by a Commander in Chief jointly nominated (for a non-renewable period of 5 years) by

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[3]   Luigi Einaudi, *Lo scrittorio del Presidente (1948-1955)* (Turin: Einaudi, 1956), 89; Emery Reves, *Anatomia della pace* (Bologna: Il Mulino, 1990), 43-6.

the European Parliament and Council. Representatives within the European Parliament and Council of the non-participating EU member states will not take part in the process of nomination. The SEA will be progressively enlarged to include all Divisions and Brigades then existing within the participating member states. The current European Defence Agency (created with the task of developing the defensive capabilities of the Union, promoting technology and research for common defence, the creation of a European equipment market for defence, and the strengthening of the technological and industrial base of the European defence) should be progressively transformed as the operational core of SED.

2) **The creation of a Naval and Aircraft General Staff** (NAGS), composed by a representative from each member state participating in SED, and chaired by a Commander in Chief jointly nominated (for a non-renewable period of 5 years) by the European Parliament and Council. The mission of the NAGS would be to achieve the fusion of all existing naval and aircraft fleets of the participating member states.

3) **The irreversible fusion of all existing armies, naval and aircraft fleets** of the participating member states. SEA would operate under the responsibility of an elected (jointly by the European Parliament and Council) High Commander, chairing a Supreme General Staff composed by members of AGS and NAGS. The High Commander together with the Commanders in Chief of AGS and NAGS would be responsible in front of a Commissioner for Defence, member of the European Commission.[4]

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[4]   On the creation of a European independent military force, see Graeme P. Herd and John Kriendler, *Understanding NATO in the 21st Century: Alliance Strategies, Security and Global Governance* (London: Routledge, 2012); M. Norheim-Martinsen, *The European Union and Military Force: Governance and Strategy* (Cambridge: Cambridge University Press, 2012). On European security integration, see Charlotte Wagnsson, James Sperling and Jan Hallenberg, eds., *European Security Governance: The European Union in a Westphalian World* (London: Routledge, 2009); Ursula C. Schroeder, *The Organization of European Security Governance: Internal and External Security in Transition* (London: Routledge, 2011); Mai'a Cross, *Security Integration in Europe: How Knowledge-based Networks Are Transforming the European Union* (Ann Arbor, MI: University of Michigan Press, 2011); M. Norheim-Martinsen, *The European Union and Military Force: Governance and Strategy* (Cambridge: Cambridge University Press, 2012); George Christou and Stuart Croft, eds., *European 'Security' Governance* (London: Routledge, 2014); Jaap de Zwaan, Martijn Lak and Abiola Makinwa, eds., *Governance and Security Issues of the European Union: Challenges Ahead* (Den Haag: Asser Press, 2016); Spyros Economides and James Sperling, eds., *EU Security Strategies: Extending the EU System of Security Governance* (London: Routledge, 2017); Marianne Riddervold, *The Maritime Turn in EU Foreign and Security Policies: Aims, Actors and Mechanisms of Integration* (London: Palgrave Macmillan, 2018); Kamil Zwolski, *European Security in Integration Theory: Contested Boundaries* (London: Palgrave Macmillan, 2018).

[4]   About the process of identification of European 'common goods', and their governance, see Adrienne Héritier, *Common Goods: Reinventing European Integration Governance* (Lanham, MD: Rowman & Littlefield Publishers, 2002); Stefan Collignon, *The Governance of European Public Goods: Towards a Republican Paradigm of European Integration* (London: Palgrave Macmillan, 2017). For studies of the environmental policy of the Union outside its borders, see Gracia Marín Durán and Elisa Morgera, *Environmental Integration in the EU's External Relations: Beyond Multilateral Dimensions* (Oxford: Hart, 2012); Maria Lee, *EU Environmental Law, Governance and Decision-Making* (Oxford: Hart Publishing, 2014); Henrik Selin and Stacy D. Van Deveer, *European Union and Environmental Governance* (London: Routledge, 2015); Camilla Adelle, Katja Biedenkopf and Diarmuid Torney, eds., *European Union External Environmental Policy: Rules, Regulation and Governance Beyond Borders* (London: Palgrave Macmillan, 2017).

III.   The federal nucleus and the aims of a single European foreign policy

Among the competences of the European Federal Union, there should also be the foreign policy. The mission of a European single foreign policy equipped with its own autonomous defence force, could specifically aim, among other goals, to:

1) **The stabilization of the Mediterranean region**. With the strategic, economic, and socio-political stabilization of the Mediterranean basin, the European Union would be the major contributor to the political stabilization of the world as a whole, while the Mediterranean continues to be one of the main dynamic sources of political, racial, religious, and economic conflicts. Today the conflict of power for world dominance unfolds in the Mediterranean. However, the Mediterranean has not simply been a framework for conflicts or exchanges, but an area where borders are shifting. The Mediterranean is part of the largest set of emerged lands in the world, a gigantic unitary Euro-Afro-Asian Continent, where, according to Fernand Braudel, everything precociously circulated. In those continents welded together, men have found the great scenario of their universal history.

2) **The transformation of the Euro from regional to global currency**. Regional monetary unions can be created and work successfully for a limited period only within a stable political, economic, military, and financial system, which for the case of the Euro was provided by the Atlantic System. The Euro today has a predominantly regional dimension, since it is the currency of an area including some half-billion European citizens. It embodies the successful attempt to stabilize international finance by stabilizing the European region in the aftermath of the crisis of the Bretton Woods system. The transition of the Euro from being merely regional into a new global currency, capable of joining the dollar as an international reserve currency, could promote the creation of a new global financial and economic settlement, bringing back to the Atlantic the world's financial centre of gravity. However, the Euro could support the dollar as an international reserve currency only with the establishment of a real political barycentre to support it. A currency devoid of military power is not in fact able to play that global role.

3) **The development of the Global South**. Once the Euro were the expression of a genuine statehood, with specific competences in economic, foreign, and military policy, it could offer the European Union a leading role in the development of the Global South. The question of the unequal development and distribution of wealth in the world is assuming the characteristics of a real planetary emergency. If this question, until recently, crossed the states of advanced economies within themselves, today it affects them crosswise, creating a demarcation line in the world between a minority of the world's population that enjoys three-quarters of the planet's resources and wealth, and a majority that survives by using the remaining quarter. If we ignore the fate of what Thomas Friedman called the turtles of our society, and of the same turtle-states, we face a certain catastrophe. The universalist vocation of the European construction will be measured by its ability to export the great struggle for the diffusion of social rights, for better education and for more dignified living conditions to the areas of underdevelopment and exploitation of human labour, without defending them. As for the European Union, the candidate countries to be included in this plan should at first be all those of North Africa (Morocco, Algeria, Tunisia, Libya, and Egypt) and the Middle

East (Israel, Palestine, Lebanon, Syria, and Jordan). The prospect incorporating the economies of these countries into the European Union would, on the other hand, guarantee the Union a significant economic boost for more than a generation.[5]

IV.   A Europe of concentric circles

The question of the creation of a federal European army and foreign policy would make the question of full co-decision between Parliament and the Council and the affirmation of the principle of majority voting within the Council no longer avoidable. The institutional structure of the European Federal Union would be defined by a federal government, governed by a President directly elected by the citizens on the basis of the double shift – in office for a period of five years, renewable once, and composed of ministers for foreign, economic, finance, defence, justice, and environment affairs, appointed and possibly revoked directly by the President. The government would be responsible in front of a bicameral legislature, in which the Senate would be composed by three representatives for each member state, and the House of Representatives by one MEP per half million citizens on a state basis. To guarantee the respect of the powers of the organs of the federal state and the member states there would be both a Constitutional Court, which would exercise the function of Supreme Court, and the Federal Courts, whose jurisdiction would include all issues related to interstate relations. The federal government should have a budget of at least ten per cent of the aggregate GDP of the member states of the European Federal Union and of its own revenue – that is not derived from the contributions of the member states – from the allocation of a share of VAT.

This would create an agile institutional structure, whose work could be effectively monitored by public opinion, and that in the figure of the President, or his/her delegate, would collectively represent the member countries in international organizations such as the United Nations and the European Union. The European Union itself would continue to have its current tasks and, through the strengthening of economic integration policies (the creation of infrastructures, mechanisms for the redistribution of wealth, investment in research) could promote the convergence of the economies of its member states, facilitating their eventual entry into the European Federal Union.

With the presence within the European Union of a federal core of at least two hundred and fifty million citizens, it would also be possible to strengthen its environmental, migration, educational

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[5]   For a debate on the vocation of European foreign policy, see Zaki Laïdi, *EU Foreign Policy in a Globalized World: Normative Power and Social Preferences* (London: Routledge, 2008); Stephan Keukeleire and Tom Delreux Red, *The Foreign Policy of the European Union* (London: Red Globe Press, 2014); Erik Jones and Saskia van Genugten, eds., *The Future of European Foreign Policy* (London: Routledge, 2016). On the promotion of democratic values and human rights by the European Union, see Richard Youngs, *The European Union and Democracy Promotion: A Critical Global Assessment* (Baltimore, MD: Johns Hopkins University Press, 2010); Rosa Balfour, *Human Rights and Democracy in EU Foreign Policy: The Cases of Ukraine and Egypt* (London: Routledge, 2011); D. Huber, *Democracy Promotion and Foreign Policy: Identity and Interests in US, EU and Non-Western Democracies* (London: Palgrave Macmillan, 2015); Benedetta Berti, Kristina Mikulova and Nicu Popescu, *Democratization in EU Foreign Policy: New Member States as Drivers of Democracy Promotion* (London: Routledge, 2015).

and research policies, until the progressive coinciding of the European Union – and thus its dissolving – with the European Federal Union.

The creation of the European Federal Union would entail a profound revision of the institutional structure of the member states, with the abolition of some ministries, the introduction of elements of administrative and fiscal federalism, and the distribution of some governmental functions at institutional levels as close as possible to the citizen. This would progressively create a federal society in which the citizens would find themselves, for the first time in European history, able to exercise their right to contribute to the formation of the public will and monitor its effective implementation, at various levels, from the local to the supranational. Democracy would then cease to be a mere fiction or a tool for selecting the ruling class and could regain its full original meaning.[6]

The federal architecture described here starting from the top should rather be illustrated starting from below, from the citizen, who in democracy is the original custodian of sovereignty. The citizen would then give up part of his own sovereignty in favour of a political body capable of more effectively guaranteeing his interests, and willing to delegate, in turn, part of the original sovereignty of the citizen, to another political entity up to the world government.[7]

The dual process of centralization – pooling governmental competences at supranational level – and decentralization – devolving administrative capacities to subnational regions – within the European Union has already created the so-called system of multi-level governance. It marked a watershed in the development of a European polity, transforming the European Union into a laboratory of innovative multi-level governance, and offering independent civil-society organizations the opportunity to play a role in the process of formation of the popular will, particularly for their capacity to aggregate a varied range of political demands. Civil-society organizations are gaining recognition for their political impact, above and beyond formal consultative status.[8]

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[6] For a comparative analysis on the creation of a European administrative democracy, see Thomas D. Zweifel, *Democratic Deficit? Institutions and Regulation in the European Union, Switzerland, and the United States* (Lexington, KY: Lexington Books, 2003); Athanasios Psygkas, *From the 'Democratic Deficit' to a 'Democratic Surplus': Constructing Administrative Democracy in Europe* (New York: Oxford University Press, 2017). For a debate on the democratic value of European governance, see Jonathan Metzger, Philip Allmendinger and Stijn Oosterlynck, *Planning Against the Political: Democratic Deficits in European Territorial Governance* (London: Routledge, 2014); Victor Bekkers, Geske Dijkstra and Menno Fenger, eds., *Governance and the Democratic Deficit: Assessing the Democratic Legitimacy of Governance Practices* (London: Routledge, 2016).

[7] Majocchi, *La difficile costruzione*, 95-6. For an examination of the various levels of governance, see Gary Marks, Fritz W. Scharpf and Philippe C. Schmitter, *Governance in the European Union* (Newcastle upon Tyne: SAGE, 1996); Liesbet Hooghe, *Multi-Level Governance and European Integration* (Lanham, MD: Rowman & Littlefield, 2002); Liesbet Hooghe, *Multi-Level Governance and European Integration* (Lanham, MD: Rowman & Littlefield, 2002).

[8] For a discussion of European multi-level governance, see Marco Mascia, *Participatory Democracy for Global Governance: Civil Society Organisations in the European Union* (Oxford: Peter Lang, 2012); Michael Tatham, *With, Without, or Against the State? How European Regions Play the Brussels Game* (New York: Oxford University Press, 2016); Maura Adshead, *Developing European Regions? Comparative Governance, Policy Networks and European Integration* (London: Routledge, 2017); Zdzislaw Mach, *Local Community, Power and European Integration* (Oxford: Peter Lang, 2017); Andreas Ladner and Nicolas Keuffer, *Patterns of Local*

However, there is a real danger that the European Union risks being delegitimized by the current democratic deficit. This deficit is not simply the effect of the limited role that democratic representation plays within the institutional mechanism of the Union, but of a certain indifference and disinterestedness by national leaders, and politicians in general, towards the complexity of constitutional policy. The Union has the institutions of a modern democracy, but it does not work as such. The growth of supranational activities and decision-making processes within it is also increasingly challenging the democratic legitimacy of its member states. The completion of the process of European integration towards a democratic political union seems then to be no longer just a one problem among many others, but the fundamental question of our time, on which depends the realization of democracy beyond the nation state or its defeat.

The only alternative to the completion of the process of European unification with the creation of the European Federal Union is the final failure of the project, with the inevitable consequence for Europe of falling back into its political division of conflicting groups of states. It is undeniable that the true and specific character of the twentieth century is reflected in the three attempts to unify Europe. If the first two failed because they were realized through violence, and two world wars were necessary to defeat them, the third is in place today, and is being developed by peaceful methods. The question of overcoming the political division of Europe into national states therefore appears as an objective factor in the twentieth-century historical process as a whole – together with other factors, such as the October Revolution and the advent of the Atlantic System – and understandable only by hypothesizing the start, from a specific moment, of the supranational course of history. The failure of the project would inexorably extend into our century the demonic consequences of European anarchy which characterized the first half of the previous one.[9]

It is also possible to hypothesize – purely theoretically, because in fact every historical process has a conclusion – that the process of European unification will remain forever open, that is to say it will not end with the creation of a state. The stall hypothesis foresees a process that feeds itself indefinitely without producing significant advances, based on intergovernmental negotiations. According to this hypothesis, the process of European integration has saved or rescued the nation state, which would thus continue to exist and resist indefinitely.

What was defined as the rescue of the European nation state is then just a temporary phenomenon, which is only valid for the period of transition to the creation of the European state. In spite of crises, setbacks, and attempts to recover lost sovereignty at the national level, the history of the process of European integration shows a progressive deepening. The negotiations that defined the

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Autonomy in Europe (London: Palgrave Macmillan, 2018).

[9] For a critical analysis of the conflicting or complementary character of nationalism and globalisation, see David Brown, *Contemporary Nationalism* (London: Routledge, 2003); David Brown, *Contemporary Nationalism* (London: Routledge, 2003); Eric Helleiner and Andreas Pickel, eds., *Economic Nationalism in a Globalizing World* (Ithaca, NY: Cornell University Press, 2004); Anthony Smith, *Nations and Nationalism in a Global Era* (Cambridge: Polity, 2013); Daphne Halikiopoulou and Sofia Vasilopoulou, *Nationalism and Globalisation: Conflicting or Complementary?* (London: Routledge, 2013); Stephen Tierney, *Nationalism and Globalisation* (Oxford: Hart Publishing, 2018).

European agenda, creating new competences and common institutions, have effectively transformed national interests into a common European policy. The various attempts to negotiate a national opt-out have actually come to reinforce the integration process.[10]

This hypothesis excludes *a priori* the possibility of completing the process of transferring sovereignty from the hegemonic power within the Atlantic System to the European institutions. Sovereignty is the exercise of power by the citizen, who delegates its exercise to representative and constitutional institutions for a limited and renewable period of time. Sovereignty can therefore be transferred only to a state, and precisely because there is not yet a European state it is still predominantly exercised by the hegemonic state within the system. If it were transferred to individual European states, this would mean both the failure of the process of European unification – with the restoration of national sovereignty by individual European states, a fundamental cause of European civil wars – and the collapse of the Atlantic System, and with it the return to a situation of international anarchy.[11]

V.   The nature of European constitutionalism

Although the European Union did not yet produce the institutions of a real state, it certainly offered the most advanced example of "functional constitutionalism," or of constitutional authority, and understanding it is essential to produce a model of global governance. Constitutionalism as an empirical idea and normative ideal has since become synonymous with legitimate government.[12]

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[10]   Alan Milward, *The European Rescue of the Nation State* (London: Routledge, 1999); id., *Politics and Economics in the History of the European Union* (London: Routledge, 2005). For an analysis of Milward's contribution, see Fernando Guirao, Frances Lynch and Sigfrido M. Ramirez Perez, eds., *Alan S. Milward and a Century of European Change* (London: Routledge, 2012). For an examination of the institutional and social transformations of the member-States as an effect of the integration process, see Fabrizio Capogrosso, *Shared Sovereignty and Denationalisation of Statehood in the European Union: Has Governance Eclipsed Government?* (Munich: GRIN Verlag, 2009); M. Wind, *Sovereignty and European Integration: Towards a Post-Hobbesian Order* (New York: Palgrave, 2001); Christoph Knill, *The Europeanisation of National Administrations: Patterns of Institutional Change and Persistence* (Cambridge: Cambridge University Press, 2001); Klaus H. Goetz and Simon Hix, eds., *Europeanised Politics?: European Integration and National Political Systems* (London: Routledge, 2012); Rebecca Adler-Nissen, *Opting Out of the European Union: Diplomacy, Sovereignty and European Integration* (Cambridge: Cambridge University Press, 2014); S. Börner and M. Eigmüller, eds., *European Integration, Processes of Change and the National Experience* (London: Palgrave Macmillan, 2015); Rainer Arnold, *Limitations of National Sovereignty through European Integration* (Berlin: Springer, 2016); Paolo Dardanelli, *Restructuring the European State: European Integration and State Reform* (Montreal: McGill-Queen's University Press, 2017).

[11]   About the incomplete nature of the process, see Wim van Meurs, *The Unfinished History of European Integration* (Amsterdam: Amsterdam University Press, 2018). For a debate about the identity of the international relations field and political science, see R. J. Jervis and R. Art, *International Politics: Anarchy, Force, Imperialism* (Boston, MA: Little, Brown and Company, 1973); Michael E. Brown, Sean M. Lynn-Jones and Steven E. Miller, eds., *Perils of Anarchy: Contemporary Realism and International Security* (Cambridge, MA: MIT Press, 1995); Brian C. Schmidt, *The Political Discourse of Anarchy: A Disciplinary History of International Relations* (Albany, NY: SUNY Press, 1997); Robert D. Kaplan, *The Coming Anarchy: Shattering the Dreams of the Post Cold War* (London: Random House, 1988); J. Larkins, *From Hierarchy to Anarchy: Territory and Politics before Westphalia* (New York: Palgrave Macmillan, 2010); Olivier Schmitt, *Raymond Aron and International Relations* (London: Routledge, 2018).

[12]   For a debate on the character of the European 'material' and legal Constitution, see Turkuler Isiksel, *Europe's*

Yet, the constitutionalization of the European Union took place through the back door, with the progressive creation of a single legal order *ex proprio vigore* (i.e. a coherent and systematic corpus of legal rules with autonomous validity, coinciding with a territorially limited social and political entity), mainly intended to support the creation of a common economic free-trade area. Since the Treaties of Rome, the European Court of Justice has therefore played an important role in constitutionalization, coming to transform the existing treaties into a material Constitution. This process has had a direct influence on regional integration, the institutionalization of norms, institutional expansion, guaranteeing the effectiveness of European laws, the creation and maintenance of the borders of the union, and the creation of social solidarity.[13]

The set of mechanisms, institutions, rules, and practices that make up the current Constitution of Europe have not, however, been a matter of public debate, nor do they seem to have influenced national political cultures in any significant way. National parliaments have become the primary arena for public debate about the Union when asked—or forced—to ratify decisions taken at the European level. The growing politicization of European governance brought about a party-political polarization, establishing a link between two dimensions of debate – the discursive justification and party-political contestation of decision-making in the Union.[14]

Functional Constitution: A Theory of Constitutionalism Beyond the State (New York: Oxford University Press, 2016); George Gerapetritis, *New Economic Constitutionalism in Europe* (Oxford: Hart Publishing, 2019). For a comparative study of European and American tradition, see Georg Nolte, *European and US Constitutionalism* (Cambridge: Cambridge University Press, 2005).

[13] About the creation of a European legal order and the constitutionalization of the European integration process, see M. P. Maduro, *We the Court: The European Court of Justice and the European Economic Constitution* (Oxford: Hart, 1998); J. H. H. Weiler, *The Constitution of Europe: 'Do the New Clothes Have an Emperor?' and Other Essays on European Integration* (Cambridge: Cambridge University Press, 1999); Zenon Bankowski and Andrew Scott, eds., *The European Union and its Order: The Legal Theory of European Integration* (Oxford: Wiley-Blackwell, 2000); Deirdre Curtin and Alfred E. Kellerman, eds., *The EU Constitution: The Best Way Forward?* (Den Haag: Asser Press, 2005); Joakim Nergelius, *Constitutionalism: New Challenges, European Law from a Nordic Perspective* (Leiden: Martinus Nijhoff, 2007); Michelle Everson and Julia Eisner, *The Making of a European Constitution: Judges and Law Beyond Constitutive Power* (London: Routledge, 2007); Thomas Christiansen and Christine Reh, *Constitutionalizing the European Union* (London: Palgrave Macmillan, 2009); Giuliano Amato and Jacques Ziller, *The European Constitution: Cases and Materials in EU and Member States Law* (Cheltenham: Edward Elgar, 2009); Fabian Amtenbrink and Peter A. J. van den Berg, eds., *The Constitutional Integrity of the European Union* (Den Haag: Asser Press, 2010); Luigi Corrias, *The Passivity of Law: Competence and Constitution in the European Court of Justice* (Berlin: Springer, 2011); Michael O'Neill, *The Struggle for the European Constitution: A Past and Future History* (London: Routledge, 2011); Michael Longo, *Constitutionalising Europe: Processes and Practices* (London: Routledge, 2016); Claus Offe and Ulrich Preuß, *Citizens in Europe: Essays on Democracy, Constitutionalism and European Integration* (London: ECPR Press, 2016).

[14] On the role of National Parliaments in the process of European unification, see Richard S. Katz and Bernhard Wessels, eds, *The European Parliament, the National Parliaments, and European Integration* (New York: Oxford University Press, 1999); Vivien A. Schmidt, *Democracy in Europe: The EU and National Polities* (New York: Oxford University Press, 2006); Glyn Morgan, *The Idea of a European Superstate: Public Justification and European Integration* (Princeton, NJ: University Press, 2007); John O'Brennan and Tapio Raunio, *National Parliaments within the Enlarged European Union: From 'Victims' of Integration to Competitive Actors?* (London: Routledge, 2007); Frank Wendler, *Debating Europe in National Parliaments: Public Justification and Political Polarization* (London: Palgrave Macmillan, 2016); Thomas Winzen, *Constitutional Preferences and Parliamentary Reform: Explaining National Parliaments' Adaptation to European Integration* (Oxford: Oxford University Press, 2017); Christina J. Schneider, *The Responsive Union: National Elections and European*

The question of European constitutionalism cannot be reduced however, to the mere question of a political mechanism. It is rather an aspect of the fundamental question, namely, how to manage the transition from a national society based on the values of centralization/ devolution and nationalism, to a multi-/ supranational society based on community values and cosmopolitanism. Any new constitutional model should take into consideration the constitutional cultures existing within the Union, studying both the relationship between constitutional traditions in the production of existing national identities, and the possibilities of integrating existing national policies into a new European entity, both problems being related to the establishment of a new political authority.[15]

The paradox of constitutionalism is whether those who have the authority to formulate a constitution – the so-called 'constituent' power – can do so without effectively yielding, with the constitutional form that they implement, that authority to the institutional sites of 'established' power. The question is whether the constituent power is to be exhausted in the single constitutive act, or maintained, coming to perform the function of critical control over the operation of the constitutional system put in place, and/or should be the existence of an external institutional authority to be called upon and brought into action in times of crisis.[16]

In the process of European unification, the constituent power has mainly been exercised by the European Parliament, which played the historical role of the federator. The constituent process generated by the Parliament drew its legitimacy on the right of self-determination by the European people to constitute themselves as a new political subject. With the direct elections of the European Parliament, the principle of self-determination has been used, in fact, for the first time in European history, not to divide existing political entities, but to unite, and thus coming to sanction the constituent right of the European people.

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[15]   *Governance* (Cambridge: Cambridge University Press, 2018).

For a comparative analysis of European and American constitutionalism, see Georg Nolte, *European and US Constitutionalism* (Cambridge: Cambridge University Press, 2005). For an examination of the relationship between the national identities of the Nordic countries and the European unification process, see Lene Hansen and Ole Waever, *European Integration and National Identity: The Challenge of the Nordic States* (London: Routledge, 2003); Malin Stegmann McCallion and Alex Brianson, eds., *Nordic States and European Integration: Awkward Partners in the North?* (London: Palgrave Macmillan, 2017). For a study of the Europeanisation of national identity in Norway, see Gamze Tanil, *Europeanization, Integration and Identity: A Social Constructivist Fusion Perspective on Norway* (London: Routledge, 2012).

[16]   About the relationship between constituent power and the constitutional form, see Martin Loughlin and Neil Walker, eds., *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (New York: Oxford University Press, 2008); Nicole Scicluna, *European Union Constitutionalism in Crisis* (London: Routledge, 2014); Kaarlo Tuori, *European Constitutionalism* (Cambridge: Cambridge University Press, 2015); Jiří Přibáň, *Sovereignty in Post-Sovereign Society: A Systems Theory of European Constitutionalism* (London: Routledge, 2017); Richard Bellamy and Dario Castiglione, *From Maastricht to Brexit: Democracy, Constitutionalism and Citizenship in the EU* (London: ECPR Press, 2018).

VI.   A Constitutional moment

The creation of the constitutional organs characteristic of a federation cannot however be achieved – as the functionalists and the theologians of spillover preached – by means of a gradual transfer of competences from the states to the Union, but by a constitutional leap. The functionalist strategy of promoting spillover from one economic sector to another has failed to achieve a steady progress towards a federal union, as Monnet and other functionalists had hoped. On the other hand, the unanticipated results of integration through law have produced over-regulation, and an institutional framework which is too rigid to allow significant policy and institutional innovations. Thus, integration by spillover has produced sub-optimal policies, and a steady loss of legitimacy by European institutions. Both the functionalist approach and the classic Community method are becoming obsolete. These methods are bound to fail, not just due to a lack of popular support, but because they are unable to deliver the public goods which Europeans expect to receive from a fully-fledged government.[17]

It is quite clear that the functionalist method has exhausted all its possibilities, and that only with the application of the constituent method it is possible to complete the process of European unification. The growing popular dissent towards the European Union is in fact more concerned with the method by which decisions are being made, rather than the need to find common solutions to questions that can no longer be resolved at the national level. However, the transition from a mainly intergovernmental decisional level to a real governmental one could not be automatic or painless.[18]

When the institutions of the European federation come into operation, the traditional institutions of the member states will cease to exist, at least in relation to the exclusive competences that will be transferred. Since these are the primary functions in the exercise of sovereignty, our old national states will in fact be downgraded to regional states. This is the historical meaning European Revolution, the end of the national state and the birth of the first truly international state.[19]

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[17]   On the spillover effects, and the loss of legitimacy by European institutions, see Marjolein C. J. Caniels, *Knowledge Spillovers and Economic Growth* (Cheltenham: Edward Elgar, 2000); Bas van Aarle and Klaus Weyerstrass, eds., *Economic Spillovers, Structural Reforms and Policy Coordination in the Euro Area* (Amsterdam: Physica, 2007); Sverker Gustavsson, Lars Oxelheim and Lars Pehrson, eds., *How Unified Is the European Union?: European Integration Between Visions and Popular Legitimacy* (Berlin: Springer, 2009); Giandomenico Majone, *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration* (New York: Oxford University Press, 2009); Jan Stejskal, Petr Hajek and Oto Hudec, eds., *Knowledge Spillovers in Regional Innovation Systems: A Case Study of CEE Regions* (Berlin: Springer, 2018).

[18]   For a debate on the present governance crisis, see Jonas Tallberg, *Leadership and Negotiation in the European Union* (Cambridge: Cambridge University Press, 2006); Ivan T. Berend, *The Contemporary Crisis of the European Union: Prospects for the Future* (London: Routledge, 2016); Demosthenes Ioannou, Patrick Leblond and Arne Niemann, eds., *European Integration in Times of Crisis: Theoretical Perspectives* (London: Routledge, 2017); Desmond Dinan, *The European Union in Crisis* (London: Red Globe Press, 2017).

[19]   For an examination of a possible model of European Constitution, I refer to mine "Towards a Model of the European Constitution", *Die Union*, 4, (1998): 27-32. About the European constitutional process, see M. J. Sandel, *The Political Theory of the Procedural Republic*, in *Constitutionalism and Rights*, G. C. Bryner and N. B. Reynolds, eds., (Provo, UT: Brigham Young University Press, 1987); G. F. Mancini, *The Making of a Constitution for Europe,* in *The New European Community. Decision-making and Institutional Change,* R. O. Keohane and S. Hoffmann eds., (Boulder, CO: Westview Press, 1989), 177-94; Patrick Ransome, ed., *Studies in Federal*

According to Elazar, federalism as a process is capable of constitutionalizing economic interdependence, that is to say, gradually promoting the political integration of humanity, governing the thrust of the productive forces beyond the borders of the states. Elazar notes that economic globalization constitutes a formidable driving force towards the creation of confederal ties between states and political and social organizations, the strongest of which "have assumed a constitutionally binding character." International law itself, which "traditionally was based on the absolute character of state sovereignty," has changed as a result of this process. Conceived as a process, federalism has so far demonstrated a great deal of flexibility in its concrete applications, and within the European Union it will be able to deploy its full potential and establish itself as the political culture that the world needs to forever end war as instrument for resolving international conflicts.[20]

"The essence of federalism" is not defined, according to Elazar, by a particular set of institutions, "but in the institutionalization of specific relationships among the participants in political life." Federalism therefore appears as a "phenomenon that offers many options for the organization of political authority and power," and where "adequate relations are created, it is possible to develop a wide variety of political structures consistent with federal principles."[21]

VII. Aims and implementation of a study group on the European constitutional process

The proposed creation of a study group on the European constitutional process aims to stimulate a wide debate within the European Union and have a direct impact on the European constitutional process, bringing together distinguished academics (experts on the historical, economic, political, social and juridical aspects of the process of European unification) with members of the European Parliament (being the basis of legitimacy of European sovereignty and representing European

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Planning (London: Lothian Foundation Press, 1990); Melville Channing-Pearce, ed., *Federal Union. A Symposium* (London: Lothian Foundation Press, 1991); Patrick Ransome, *Towards the United States of Europe. Studies in the Making of the European Constitution*, (London: Lothian Foundation Press, 1991); Preston King and Andrea Bosco, eds., *A Constitution for Europe. A Comparative Study of Federal Constitutions and Plans for the United States of Europe* (London: Lothian Foundation Press, 1991); Richard Bellamy, *Constitutionalism, Democracy and Sovereignty: American and European Perspectives* (Beatty, NE: Avebury, 1996); G. F. Mancini, *Democracy and Constitutionalism in the European Union: Collected Essays* (Oxford: Hart Publishing, 2000); J. H. H. Weiler and Marlene Wind, eds., *European Constitutionalism beyond the State* (Cambridge: Cambridge University Press, 2003); Lynn Dobson and Andreas Follesdal, *Political Theory and the European Constitution* (London: Routledge, 2004); Charles B. Blankart and Dennis C. Mueller, eds., *A Constitution for the European Union* (Cambridge, MA: The MIT Press, 2004).

[20] For a study on transnational identities within the European Union, see James B. Minahan, *Nations without States: A Historical Dictionary of Contemporary National Movements* (Westport, CT: Greenwood, 1996); Richard K. Herrmann, Thomas Risse and Marilynn B. Brewer, *Transnational Identities: Becoming European in the EU* (Lanham, MD: Rowman & Littlefield Publishers, 2004); Thomas Risse, *A Community of Europeans?: Transnational Identities and Public Spheres* (Ithaca, NY: Cornell University Press, 2010). Daniel J. Elazar, *Constitutionalizing Globalization. The Postmodern Revival of Confederal Arrangement* (New York: Rowman & Littlefield, 1998) 6, 147.

[21] Elazar, *Exploring Federalism*, 12.

citizens in their constituent capacity), policy-makers, and representatives of the European 'civil society' (representatives of trade unions, industrialists, the churches, and political movements), to discuss the constitutional character of the evolving European entity.

The competence already acquired by the Jean Monnet Centres of Excellence and the European University Institute, which will be invited to participate, could offer a remarkable contribution to the study and debate, through the web and specific activities, on the completion of the European constitutional process towards the creation of a true transnational democracy.

The study group will investigate the vital link between the general European constitutional process and the definition of an evolving European entity. The study group might carry out research on the following main fields:

i)   A historical analysis of the main driving forces for European unification;
ii)   A comparative study of federal constitutions and EU institutions;
iii)   The constitutional aspects of the EU;
iv)   The economic aspects of the European Constitution;
v)   The foreign policy aspects of the European Constitution;
vi)   The defence aspects of the European Constitution;
vii)   Federal taxation;
viii)   Federal control of education;
ix)   Federal control over transports and communications.

In particular, the study group will discuss on:

1) Previous attempts to establish a European Constitution, and their relevance to the present constitutional process. Comparative studies of federal constitutions and of the plans for a United States of Europe put forward since 1940 would be the starting point. In this investigation, it would be necessary to assess the strengths and weaknesses of such models, including their flexibility and responsiveness to the constraints on constitution-building.

2) The differing constitutional traditions of modern European states, in order to examine a) the relationship between constitutional traditions and the construction of national identities; b) the possibilities for integrating existing national polities within a new European entity; and c) the general principles on which a constitutional framework for the European Union might be based.

3) The emergence of a pan-European identity and a European political culture, their relationship to existing national identities and political cultures, and the link between such a European identity and political culture and the formation of consent required to make a pan-European constitutional authority viable.

4) The problems and possibilities of achieving a permanent constitutional framework for the European Union, and to study the mechanisms for managing the transition from a national-based society to one based on supranational political and economic principles.

VIII. The functioning of the study group

Membership will be offered to Jean Monnet Chairholders who have distinguished themselves in the history and theory of European unification, other leading academics, policy and opinion makers, and members of the European Parliament presently involved in the process of institutional reform of the EU. Membership will also be offered to representatives of the European civil society (industrialists, trade unionists, the churches, political movements and organizations). The study group therefore aims to promote debate among its members and the public at large on crucial issues for the future of the European construction. The accessibility to a dedicated website by citizens of non-EU states (particularly those from the Balkans and the Mediterranean) will indirectly involve into this vital debate a large part of public opinion from countries not yet members of the European Union, offering an innovative approach to the process of constitutional construction.

Members of the study group will be asked to produce essays and documents, according to their specialization and competence, on the historical, economic, juridical, political, and sociological aspects of the Constitution which the European Union needs in order to complete the process of European unification.

The publication of the contributions on a dedicated website (possibly linked with the existing JM Programme Community website, http://jeanmonnet.ning.com) will offer an invaluable contribution to the public debate on the evolution of present European institutions towards a new model of a supranational state and strengthen the role of the European Parliament as the 'federator' of Europe. The proceedings of the study group aim therefore to help fill the existing gap between the academic community and the European decision-making process.

The procedure of the study group will follow the successful Chatham House model, according to which a select committee will consider papers and documents for publication on the website. All members of the study group will be asked to provide comments and criticism which will be included in the form of a summary in the final online publication. One or two annual meetings are envisaged for members of the study group, during which decisions will be made concerning the organization of the working and dissemination of results. Membership of the study group will be based exclusively on academic competence and independence of judgement and would not commit members to support any specific institutional framework for the European Union.

The study group will meet in plenary sessions at least once a year and its working committees will meet regularly on a definite timetable drawn up by its members.

27 Jean Monnet Professors from 17 member-states leading Centres of Excellence have already shown interest in the creations of such a study group: 1) Prof. José Manuel Gómez Muñoz, Universidad de Sevilla, Sevilla (Spain); 2) Prof. Javier Viciano Pastor, Universidad de Valencia, Valencia (Spain); 3) Prof. Gabriela Carmen Pascariu, Universitatea "Alexandru Ioan Cuza" Din Iasi, Iasi (Romania); 4) Prof. Dr. Grigore Silasi, Western University of Timisoara, Timisoara (Romania); 5) Prof. Emil Kirchner, University of Essex, Colchester (United Kingdom); 6) Sir Francis Jacobs, King's College, London (United Kingdom); 7) Prof. Claudio Radaelli, University of Exeter, Exeter (United Kingdom); 8) Prof. Juliet Lodge, University of Leeds, Leeds (United Kingdom); 9) Prof. Cillian Ryan, University of Birmingham, Brimingham (United Kingdom); 10) Prof. Dr. Lenka Anna Rovna, Charles University, Prague (Czech Republic); 11) Prof. Yannis Valinakis, National and Kapodistrian University of Athens, Athens (Greece); 12) Prof. Dr. Tatjana Muravska, Latvijas Universitate, Riga (Latvia); 13) Prof. Dr. Wolfgang Wessels, University of Cologne, Köln (Germany); 14) Prof. Dr. Michael Bolle, Freie Universität Berlin, Berlin (Germany); 15) Prof. Thorsten B. Olesen, University of Aarhus, Aarhus (Denmark); 16) Prof. Bent Greve, Roskilde University, Roskilde (Denmark); 17) Prof. Pia Letto-Vanamo, University of Helsinki, Helsinki (Finland); 18) Prof. Dr. Helena Tendera-Wlaszczuk, Cracow University of Economics, Cracow (Poland); 19) Prof. Mario Telò, Universite Libre de Bruxelles, Bruxelles (Belgium); 20) Prof. Dr. Stefan Griller, Wirtschaftsuniversität Wien, Wien (Austria); 21) Prof. Manuel Porto, Universidade de Coimbra, Coimbra (Portugal); 22) Prof. Magnus Jerneck, University of Lund, Lund (Sweden); 23) Prof. Dr. Tanel Kerikmae, International University Audentes, Tallinn (Estonia); 24) Prof. L.W. Gormley, Rijksuniversiteit Groningen, Groningen (Netherlands); 25) Prof. Dr. Hildegard Schneider, University of Maastricht, Maastricht (Netherlands); 26) Prof. Savvas Katsikides, University of Cyprus, Nicosia (Cyprus); 27) Prof. Dr. hab. Kestutis Krisciunas, Kaunas University of Technology, Kaunas (Lithuania).

IX.   Expected impact of the activities of the study group

Long-term direct beneficiaries of the proposed research activities are present and future students of the European academic community. Furthermore, identified target groups (policy-makers, diplomats, media exponents, representatives of organized civil society) will take advantage of such a framework of activities. In particular, the study group will endeavour to establish a closer platform of intellectual and operational co-operation between the Jean Monnet Centres of Excellence involved and the European University Institute.

The added value comes from the fact that the study group will develop new interpretative lines and different approaches to the scientific core of constitutional themes, as compared to the past. The application of the Chatham House model will contribute to guarantee the scientific character of the project with a maximum degree of balanced academic expertise. The publication of its results on a website will also contribute to place the constitutional issue at the centre of the debate on the future of Europe at large.

The number of individuals that will be reached may go up to hundreds of thousands. Impact targets have been calculated on the basis of previous experiences, but it will be the online publication of the results of research and debate to offer the most innovative character of the project. Dissemination activities, together with the gradual building of a 'monnetian' network of personal relations, will be the prominent means for reaching a wide public well beyond the immediate target audience. For the first time in the history of European constitutional debate, the public at large will be able to participate in the most ambitious and crucial exercise ever attempted: the constitutional definition of the evolving European entity.

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