I. From National Identities to European Constitutionalism

1. European Constitution-Building as a Dialectical Process

On October 29, 2004, the Treaty Establishing a Constitution for Europe was signed in Rome.[1] Immediately, "European Constitution" became the commonly used label for this long und unreadable text. Almost fifty years after the conclusion of the Treaties of Rome on March 25, 1957, the European Union opened a new chapter in its history. It began with shock and frustration. The Treaty Establishing a Constitution for Europe was never to become reality. After its ratification was rejected by majorities in referenda in France and in the Netherlands, a new effort was needed to achieve the realization of its objectives. At the occasion of the fiftieth anniversary of the Treaties of Rome, the Heads of State and Government of the European Union, the President of the European Parliament, and the President of the European Commission promised in a Berlin Declaration to reignite the institutional reform-process.[2] Within a few months, an Intergovernmental Conference (IGC) under the Portuguese EU Presidency negotiated the details of what was to become the Treaty of Lisbon. This treaty was signed on December 13, 2007, by the Heads of State and Government of twenty-seven EU member states in the Portuguese capital.[3] The media reaction was friendly but cautious in light of the pending ratification marathon. The political leaders of the EU preferred to talk about it as the Reform Treaty. In fact, it was never more than a repair treaty after the ratification of the European Constitution had failed: The EU's political leaders tried to repair the failure they had made by underestimating the ratification problems of the European Constitution. Returning to the intransparent mechanism of an Intergovernmental Conference they aimed at improving democracy and efficiency in the EU institutions by undermining the third objective of the constitution-building process, transparency. As the political leaders were afraid of the unpredictable reaction of their fellow citizens, they wanted to avoid another round of referenda. They brought the constitution-building process back to backdoor diplomacy. But a referendum was unavoidable in Ireland, and it failed their hopes. The majority of Irish voters said "no" to the proposition of their leaders on June 12, 2008. The adaptation crisis aimed at achieving a new social and political contract between EU institutions and EU citizens is

1 European Union, *Treaty Establishing a Constitution for Europe*, Luxembourg: Office for Official Publications of the European Communities, 2005.

2 European Union, *Declaration on the Occasion of the Fiftieth Anniversary of the Signature of the Treaties of Rome*, Berlin, March 25, 2007, http://www.eu2007.de/de/News/download_docs/Maerz/0324-RAA/English.pdf.

3 European Union, "Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community," *Official Journal of the European Union*, C 306/Vol.50, Luxembourg: Office for Official Publications of the European Communities, 2007, www.eur-lex.europa.eu/JOHtml.do?uri=OJ:C: 2007:306:SOM:EN:HTML.

to continue. In the course of a most intensive and interesting period of European integration the overriding question has been redefined. The main question is no longer: How about an outright Constitution for Europe? At the end of the decade, the main question is: What is the constitution of Europe? How can the condition of Europe be improved, even if only gradually? The constitution-building process of the first decade of the twenty-first century has become dialectical, and it has returned to square one: defining the objectives of European integration and gaining legitimacy through successful and concrete work instead of micro-managing the institutional procedures only of relevance for those working in them. Europe's political constitution is to remain a cumulative one, based on several treaties and treaty-revisions. Europe's inner constitution, its political condition, remains in need of improvement, it can only achieve new acceptance through steady experiences with a Europe that works.

The daunting experience with European constitution-building has been part of a changing rationale of European integration. The changing rationale of European experience, in turn, has been part of the Second Founding of European integration. The American historian Joseph J. Ellis has characterized the completion of the American Constitution in 1787 as the Second Founding of the US. About half a generation after the United States had gained its independence in 1776, the work of the Founding Fathers was followed by the success of the Founding Brothers.[4] More appropriately, Ellis may have coined the American constitution-makers Founding Brethren. In the European context, the members of the European Convention that worked out the Treaty Establishing a Constitution for Europe in 2002/2003 could be considered the Founding Brethren, following the Founding Fathers of 1957. Both were followed by the repair workers who redesigned the 2007 Reform Treaty. In the end, the repair workers reckoned without their hosts, those EU citizens being asked to give their opinion in a referendum. In America, individual freedom had led to political sovereignty and constitutional order solidifying this individual freedom. In Europe, elite-driven integration has led to individual skepticism about content and perspective of a new covenant between the European Union citizens and the European Union institutions that remain essential to translate the European idea into reality. The difference is startling and yet, the European experience is extraordinary in its own right.

The painfully emerging Second Founding of the European Union brings together several trends and threads that are forming a new strong rationale for European integration before dispersing again into several directions:

- The changing rationale of European integration is related to the age of globalization and will continue for some time before being fully absorbed by the EU. The rapid development of a common foreign, security and defense policy is part of this process, but the redefinition of the rationale for European integration goes beyond specific policy areas. For the first five decades, European

4 Ellis, Joseph J., *Founding Brothers: The Revolutionary Generation*, New York: Knopf, 2000: 9.

integration was driven by the idea of internal reconciliation among the societies and the state of Europe. This path has been successful and has not yet come to full completion. Yet, it has been surpassed by the quest for a new global role for Europe. In past centuries, European countries had shaped the destiny of the world, for better or worse. In the age of globalization, the European Union needs to contribute to the management of global affairs if it wants to remain the subject of its own destiny. This fundamental shift in priorities impacts the rationale for European integration. This process is part of the Second Founding of the European Union.

- The changing basis for the legitimacy of integration is related to the process of re-calibrating the rationale for European integration. In the past, European integration was an elite-driven project for the benefit of a peaceful development in Europe. With deeper integration and with the growing global exposure of Europe, the citizens of the European Union are increasingly affected by the consequences of integration and the management of global affairs through EU institutions. The Second Founding of the European Union can only develop strong legitimacy if EU citizens recognize the work of EU institutions as helpful in improving public goods and realizing genuine political choices. The constitution-building process of European integration beyond the completion of a Single Market is not about institutional fine-tuning. It is about a necessary new contract between EU citizens and EU institutions. This remains an important part of the Second Founding of the EU.
- The long-term implications of enlarging the European Union with almost a dozen post-communist countries could not alone be accommodated by the formal acceptance of EU membership of Central and Southeast Europe and the formal acceptance of the EU's *acquis communautaire* by the candidate countries. The long-term accommodation of the enlargement effect requires a substantial and sustainable deepening of European integration. The constitution-building process that was accelerated during the first decade of the twenty-first century is part of the necessary balancing of the EU's widening with the necessary deepening of the European Union. Obviously, this process was too big too be achieved by one big stroke called the European Constitution. Yet, the gradual continuation of the treaty-based constitutionalization of European integration remains a fundamental requirement if the European Union is to maintain sustainable success. Therefore, the failed constitution-building experience of the first decade of the twenty-first century will remain an important part of the Second Founding of the EU.

The constitution-building experience during the first decade of the twenty-first century was a classical European reaction to a genuine European question: Integration through institutional designs that remain abstract, cold and irrelevant for most of the EU

citizens which these institutions are serving. The quest for a European Constitution has been the latest climax of an integration process that runs fundamentally counter to Europe's experience. European integration is the most successful utopia Europe has ever experienced in its political history. It is the antithesis to Europe's history of conflict, mistrust and balance of power. It should not come as a surprise that it was and remains a daunting struggle to frame the political and legal order of the European Union. In America, independence and constitution-making were expressions of hope, vision and optimism. In Europe, integration and its quest for constitutionalization are antitheses to the general European experience with politics. European integration was never utopian in its optimism but always utopian in its skepticism. All the more astonishing is its unbending success amidst uncertainty and crises. The crisis over the ratification of the Treaty Establishing a Constitution for Europe and its subsequent repair work had a paradoxical effect. Political leaders became cautious and timid. They began to question their own legitimacy and that of the whole project of European integration. European citizens, in turn, became more outspoken than ever and began to claim ownership of the European integration project.

European integration remains inspired by the failure of centuries. The sustainable success of the European Union depends upon the continuous deepening of the integrative efforts that were already planted with the original inception of the European Economic Community. The tensions of this process will survive and also define the next decade in European integration beyond the double failure of implementing institutional reforms that remain abstract and insufficient for many citizens. What many understood as a crisis of integration was in fact a crisis in integration. The double rejection of leadership propositions by majorities of citizens in different European countries will eventually initiate and sharpen the need to reconnect the European idea between politicians and ordinary citizens. The constitution-building crisis of the first decade of the twenty-first century may turn out as a preparatory stage for an ever more strengthened and deepened quality integration. What was defined as period of reflection by the European Commission in 2005 became the first ever constitutional debate in the history of European integration.[5] What was meant to protect European politicians from criticism and further failure opened the door to a unique involvement of many Union citizens.

In the end, European Union citizens seem to be more courageous than their political leaders. While in the summer 2007 a majority of 66 percent of Union citizens were in favor of a full-fledged European Constitution and ready for sacrifices necessary to find

5 See Eschke, Nina, and Thomas Malick (eds.), *The European Constitution and its Ratification Crisis: Constitutional Debates in the EU Member States*, ZEI Discussion Paper C156, Bonn: Center for European Integration Studies, 2006; Kühnhardt, Ludger, *Europa neu begründen*, ZEI Discussion Paper C167, Bonn: Center for European Integration Studies, 2007.

a common ground, their leaders were hiding behind changes in nomenclature.[6] While in no country could a majority be identified that opposed a European Constitution, their leaders scrapped the symbolic components of the European Constitution with the argument that the invocation of the EU symbols could prevent the ratification of the eventual Reform Treaty out of fear it might look too much like state-building. This timid move did not rescue the Reform Treaty either. Quite the contrary, it is exactly through the European symbols that Union citizens can identify their affiliation with the EU. While European political leaders were hoping that a revision from the title Constitutional Treaty to the title Reform Treaty would help them to safeguard their credibility as European leaders, they watered down the original Treaty Establishing a Constitution for Europe without any public debate on the relevant issues (e.g., symbols, title of a European Foreign Minister, simplification of legislative procedures). The political leaders were convinced to have had no other political choice, but it was not a day of revolutionary refounding when they signed the Treaty of Lisbon on December 13, 2007. It was rather an act of helplessness, demonstrated by the fact that British Prime Minister Gordon Brown did not even participate in the signing ceremony. He appeared late and signed the Treaty in an adjacent room, wanting to show the lack of importance of the situation. Was it really a surprise that the Irish voters in their majority said "no" to this operation and its outcome in the only referendum held on the matter across the EU on June 12, 2008? The bickering and self-applauding of the EU's political actors in late 2007 turned out to be nothing more than a helpless answer to a continuing "Europe's mid-life crisis."[7] In a way, their signing of the Treaty of Lisbon was the recognition of the limits of political leadership in a European Union that has not increased the sense of ownership for the EU among its citizens. This understanding will have long-term consequences for policy formulation and the organization of the European body politic: While democracy is entering the arena of European integration, its political leadership is becoming part of the transformation process. The creation of genuine European political parties and the extension of the European policy agenda on the whole sphere of welfare-related social and societal matters must be one of its immediate and obvious consequences.

6 Eurobarometer findings in February 2004 showed that for the total of 25 EU member states, 62 percent of all respondents agreed that their country had to get ready to make concessions in order to enable the constitution of the EU come into life: European Union. European Commission, *Flash Eurobarometer, The Future "European Constitution"*, February 2004, http://ec.europa.eu/public_opinion/flash/fl159_fut_const.pdf. Eurobarometer findings in December 2006 found a majority of 53 percent of EU citizens in favour of a "European Constitution," with the highest level of support (63 percent) in Poland. The smallest gap between those in favour and those against a "European Constitution" was smallest in the United Kingdom (40 percent in favour, 35 percent against): European Union, European Commission, *Standard Eurobarometer, Eurobarometer 66: Public Opinion in the European Union*, December 2006, http://ec.europa.eu/public_opinion/archives/eb/eb66/eb66_highlights_en.pdf.

7 Thus the title of *The Economist*, "Europe's Mid-Life Crisis: A Special Report," March 17-23, (2007).

The bumpy dialectics of forward-backward-forward-backward was not new to past European experiences with past constitution-building on the national level. In fact, constitution-building on the national level in Europe has always echoed a contemporary social transformation of the respective European country. With any new upheavals and transformations, constitutions were also about to change. In fairness, it is in this context that the Treaty of Lisbon must be judged. For most of the past two decades, European national governments have been rather fragile coalition governments that needed to deliver to a broad array of clientele. Many of those majorities that were in power when the Treaty Establishing a Constitution for Europe was signed on October 29, 2004, had been replaced by another set of political leaders when the Treaty of Lisbon was signed on December 13, 2007.[8] The changes in government were echoed in different

8 In June 2004, when the Treaty Establishing a Constitution for Europe was agreed upon by the European Council, most governments in the European Union were coalitions, often rather weak because of divergent political orientations: Austria: coalition under the Christian Democratic Austrian People's Party (ÖVP) and the Nationalist Freedom Party of Austria (FPÖ) under Chancellor Wolfgang Schüssel, Federal Minister for Foreign Affairs Benita Ferrero-Waldner; Belgium: coalition under Liberals (VLD) with Socialists from Walloon and from Flanders under Prime Minister Guy Verhofstadt, Foreign Minister Louis Michel; Cyprus (Greek Republic): coalition under Social Democrats (AKEL) with Liberals (DIKO) and Conservatives (KISOS) (Turkish part: coalition under Social Democrats (CTP) and Conservatives (DP) under President Tassos Papadopoulos, Foreign Minister George Iacovou; Czech Republic: coalition under Social Democrats (SSD) with Christian Democrats (KDU-SL) and Liberals (US-DEL) under Prime Minister Vladimir Spidla, Foreign Minister Cyril Svoboda; Denmark: Liberal minority government (Venstre) with Conservatives under Prime Minister Anders Fogh Rasmussen, Foreign Minister Per Stig Møller; Estonia: right of center coalition under Conservatives (Res Publica) with Liberals (Estonian People's Union and Reform Party) under Prime Minister Juhan Parts, Foreign Minister Kristina Ojuland; Finland: left of center coalition of various Social Democrats and Socialists under Prime Minister Matti Vanhanen, Foreign Minister Erki Tuomioja; France: right of center coalition of Union for a Popular Movement (UMP) with Union for French Democracy (UDF) and the Liberal Democracy (DL) under Prime Minister Jean-Pierre Raffarin, Foreign Minister Michel Barnier; Germany: coalition government of Social Democrats (SPD) with Greens under Chancellor Gerhard Schröder, Foreign Minister Joseph Fischer; Greece: right of center absolute majority of Nea Democratia under Prime Minister Kostas Karamanlis, Foreign Minister Petros Molyviatis; Hungary: coalition under Socialists (MSZP) with left of center Liberals (SZDZS) under Prime Minister Peter Medgyessy, Foreign Minister László Kovács; Ireland: right of center majority under Fianna Fáil – The Republican Party with Progressive Democrats (PD) under Prime Minister Bertie Ahern, Foreign Minister Brian Cowen; Italy: populist conservative coalition under Forza Italia with Alleanza Nazionale, Lega Nord, Christian Democrats (CCD-CDU) and conservative Social Democrats (PSI) under Prime Minister Silvia Berlusconi, Foreign Minister Franco Frattini; Latvia: right of center coalition (with the first Green Prime Minister in Europe) under First Party with New Era Party under Prime Minister Indulis Emsis, Foreign Minister Rihard Pics; Lithuania: Socialist coalition under Social Democrats, Labour Party and Social Liberals under Prime Minister Algirdas Brazauskas, Foreign Minister Antanas Valionis; Luxembourg: right of center coalition under Christian Democrats (CSV) and Liberals (DP) under Prime Minister Jean Claude Juncker, Foreign Minister Lydie Polver; Malta: Christian Democratic majority (Nationalist Party) under Prime Minister Lawrence Gonzi, Foreign Minister John Dalli; the Netherlands: right of center coalition under Christian Democrats (CDA) with Conservative Liberals (VVD) and left of center Liberals (D66) under Prime Minister Jan Peter Balkenende, Foreign Minister Bernard R. Bot; Poland: Socialist minority government under Prime Minister Marek Belka, Foreign Minister Vlodzimierz Cimoszewicz; Portugal: right of center coalition under Social Democrats (in fact: Christian Social Conservatives) with Conservatives (Partido Popular) under Prime Minister José Manuel Durão Barroso, Foreign Minister Teresa Gouveia; Slovenia: coalition under Social Democrats with

Conservative People's Party and Party of Pensioners under Prime Minister Anton Rop, Foreign Minister Dimitrij Rupel; Slovakia: right of center coalition under Christian Democrats (SDKV and KDH) with Hungarian Party (MK), and Liberals (ANO) under Prime Minister Mikulas Dzurinda, Foreign Minister Eduard Kukan; Spain: Socialist coalition under PSOE under Prime Minister José Luis Rodriguez Zapatero, Foreign Minister Miguel Angel Moratinos; Sweden: Social-Democratic minority government (SDP) under Prime Minister Göran Persson, Foreign Minister Laila Freivalds; United Kingdom: majority of the Labor Party under Prime Minister Tony Blair, Secretary of State for Foreign and Commonwealth Affairs Jack Straw.

In June 2007, when the Treaty of Lisbon was agreed upon by the European Council, the following majorities were in charge of the governments of EU member states, still coalition governments for the most part and rather limited in their space for domestic maneuver: Austria: Grand Coalition under the Social Democratic Party of Austria (SPÖ) and the Christian Democratic Austrian People's Party (ÖVP) under Federal Chancellor Alfred Gusenbauer, Federal Minister for European and International Affairs Ursula Plassnik; Belgium: coalition of Liberals (VLD) with Socialists from Walloon and from Flanders under Prime Minister Guy Verhofstadt, Minister for Foreign Affairs Karel de Gucht; Bulgaria: coalition under the Bulgarian Socialist Party (BSP), the National Movement Simeon II and the Movements for Rights and Freedoms under Prime Minister Sergei Stanishev, Deputy Prime Minister and Minister for Foreign Affairs Ivaylo Kalfin; Cyprus (Greek Republic): coalition under the Democratic Party (DIKO), the Progressive Party of Working People (AKEL) and the Movement for Social Democracy (EDEK) under President Tassos Papadopoulos, Minister for Foreign Affairs Erato Kozakou-Marcoullis; Czech Republic: coalition under the Civic Democratic Party (ODS) the Christian and Democratic Union – Czechoslovak People's Party (KDU-ČSL) and the Green Party under Prime Minister Mirek Topolánek, Minister for Foreign Affairs Karel Schwarzenberg; Denmark: Liberal minority coalition under Liberal Party (VENSTRE) and Conservative People's Party (DKF) under Prime Minister Anders Fogh Rasmussen, Minister for Foreign Affairs Per Stig Møller; Estonia: coalition under the Estonian Reform Party, the Union of Pro Patria and Res Publica (IRL) and the Social Democratic Party under Prime Minister Andrus Ansip, Minister for Foreign Affairs Urmas Paet; Finland: coalition under the Centre Party (KESK), the National Coalition Party (KOK), the Green League and the Swedish People's Party under Prime Minister Matti Vanhanen, Minister for Foreign Affairs Ilkka Kanerva; France: right of center coalition under the Union for a Popular Movement (UMP), the Union for French Democracy (UDF), the New Centre (NC) and the Liberal Democracy (DL) under Prime Minister François Fillon, Minister for Foreign Affairs Bernard Kouchner; Germany: Grand Coalition under the Christian Democratic Union (CDU/CSU) and the Social Democratic Party of Germany (SPD) under Federal Chancellor Angela Merkel, Minister for Foreign Affairs Frank-Walter Steinmeier; Greece: right of center majority of the New Democracy (ND) under Prime Minister Kostas Karamanlis, Minister for Foreign Affairs Theodora Bakoyannis; Hungary: coalition under the Hungarian Socialist party (MSZP) and the Alliance of Free Democrats (SZDSZ) under Prime Minister Ferenc Gyurcsány, Minister for Foreign Affairs Kinga Göncz; Ireland: coalition under Fianna Fáil, the Green Party and the Progressive Democrats under Prime Minister Bertie Ahern, Minister for Foreign Affairs Dermot Ahern; Italy: coalition under the Democrats of the Left, the Communist Refoundation Party, Party of Italian Communists, Rose in the Fist, the Greens and others under Prime Minister Romano Prodi, Deputy Prime Minister and Minister for Foreign Affairs Massimo D'Alema; Latvia: coalition under the People's Party (TP), the Union of Greens and Farmers (ZZS), Latvia's First Party (LPP) and For Fatherland and Freedom/LNNK under Prime Minister Aigars Kalvītis, Minister for Foreign Affairs Maris Riekstinš; Lithuania: minority coalition under the Social Democratic Party of Lithuania (LSDP), the Lithuanian Peasant Popular Union (VNDS) and the Liberal and Centre Union under Prime Minister Gediminas Kirkilas, Minister for Foreign Affairs Petras Vaitiekūnas; Luxembourg: coalition under the Christian Social People's Party (CSV) and the Luxembourg Socialist Workers' Party (LSAP) under Prime Minister Jean-Claude Juncker, Minister for Foreign Affairs Jean Asselborn; Malta: majority of the Nationalist Party (PN) under Prime Minister Lawrence Gonzi, Minister for Foreign Affairs Michael Frendo; Netherlands: coalition of the Christian Democratic Appeal (CDA), the Labour Party (PvdA) and the Christian Union (CU) under Prime Minister Jan-Peter Balkenende, Minister for Foreign Affairs Maxime Verhagen; Poland: coalition under the Civic Platform (PO) and the Polish People's Party (PSL) under Prime Minister Donald Tusk, Minister for Foreign Affairs Radosław Sikorski; Portugal: majority of the Socialist Party (PS) under Prime Minister José Sócrates, Minister for Foreign Affairs Luís Amado; Romania: coalition of the

negotiating positions and "red lines" in the European arena. This observation does not resolve the dilemma of democratic theory and legal philosophy posed by the fact that the European Constitution had after all been ratified by eighteen EU member states when it was officially buried in 2007. That much of its political substance was resurrected through the self-acclaimed Reform Treaty cannot be denied. However, the awkward decrease in public credibility if an international signature by an incumbent government does not have binding consequences for itself or its successor government is a serious diminution of the constellation of collective solidarity expressed in the signing of a treaty by twenty-seven partners. The "repair workers" of the European Constitution ran into the same trouble when the Treaty of Lisbon was rejected in the Irish referendum on June 12, 2008 after it had already been ratified by 18 of 27 EU member states.

For European states, constitutions have always been contracts rather than covenants, alterable when need be and when new insights had evolved into new contractual consensus. The American constitution was designed and is still respected as a covenant. In spite of its amendments, it has prevailed as the longest lasting constitution in the world. Following the model of French constitution building since 1789, all European countries have amended, altered and abandoned constitutions whenever a new political consent had emerged or a revolutionary breach had forced this upon a body politic.[9] Unlike the American Constitution, constitutions in Europe were never written for eternity. The path from the Treaty of Nice via the Treaty Establishing a Constitution for Europe to the Treaty of Lisbon thus reflects the continuously changing political consensus in Europe, often within an enormously short span of time. The revision of the treaties, procedures and policy competencies in the EU will continue to accompany future changes in the political consensus across Europe.

National Liberal Party (PNL) and the Democratic Union of Hungarians in Romania (UDMR) under Prime Minister Călin Popescu-Tăriceanu, Minister for Foreign Affairs Adrian-Mihai Cioroianu; Slovenia: coalition under the Slovenian Democratic Party (SDS), New Slovenia – Christian People's Party (NSi), the Slovenian People's Party (SLS) and the Democratic Party of Pensioners of Slovenia (DeSUS) under Prime Minister Janez Janša, Minister for Foreign Affairs Dimitrij Rupel; Slovakia: coalition under Direction – Social Democracy (Smer-SD), the People's Party – Movement for a Democratic Slovakia (LS-HZDS) and the Slovak National Party (SNS) under Prime Minister Robert Fico, Minister for Foreign Affairs Ján Kubiš; Spain: majority of the Spanish Socialist Workers' Party (PSOE) under Prime Minister José Luis Zapatero, Minister for Foreign Affairs Miguel Angel Moratinos; Sweden: coalition under the Moderate Party, the Centre Party, the Liberal People's Party and the Christian Democrats under Prime Minister Fredrik Reinfeldt, Minister for Foreign Affairs Carl Bildt; United Kingdom: majority of the Labour Party under Prime Minister Gordon Brown, Labour Party, Secretary of State for Foreign and Commonwealth Affairs David Miliband.

9 See van Caenegem, R.C., *An Historical Introduction to Western Constitutional Law*, New York/Cambridge: Cambridge University Press, 1999; Reinhardt, Wolfgang, *Geschichte der Staatsgewalt: Eine vergleichende Verfassungsgeschichte Europas von den Anfängen bis zur Gegenwart*, Munich: C.H. Beck, 1999; Schulze, Reiner (ed.), *Europäische Rechts- und Verfassungsgeschichte: Ergebnisse und Perspektiven der Forschung*, Berlin: Duncker&Humblot, 1991.

This inescapable insight was already evident when the Heads of State and Government of twenty-five EU member states agreed upon the original text of the Treaty Establishing a Constitution for Europe during a European Council meeting on June 18, 2004. Yet, they did not properly address the possible consequences of this insight. The text with its 448 articles was heavy-handed in style, contradictory in key aspects of its content, and insufficient in the eyes of many observers. It remained a serious political mistake not to have managed the subsequent ratification process in a more subtle way from its very beginning. Less understandable was the underestimation of the same process during the second try of treaty-based institutional reforms through the Treaty of Lisbon which was even less readable for ordinary citizens.

As the first treaty of the EU carrying the name Constitution, the Constitutional Treaty was and will remain a historical document. Immediately after it was signed, however, it became controversial. Some were afraid – and others were hoping – that the Treaty Establishing a Constitution for Europe would be the last document of its type before the EU might collapse.[10] In the end, the Constitutional Treaty did not become reality but it triggered the first ever constitutional debate on European identity and the rationale for European integration. The Irish rejection of the Treaty of Lisbon was a strong indication for the dire need to reconnect the citizens of the European Union with its institutions and political actors.

The Second Founding of European integration did not begin with the idea to write a European Constitution in 2002. It did not come to an end with the rejection of the Treaty of Lisbon in Ireland nor would it have come to an end with the timely implementation of the Reform Treaty in 2009. Finding a new contract between the Union citizens and the idea of Europe, re-calibrating the global role for Europe, and reconciling democracy, transparency and efficiency on the European level of politics will remain major challenges for many years ahead. Yet, this process has begun. European integration has been contract-based from the very beginning.[11] A sequence of treaty revisions followed the original Treaties of Rome.[12] This sequence of treaties and treaty revisions has produced the collective "pre-constitution" of Europe.

10 See Booker, Christopher, and Richard North, *The Great Deception: Can the European Union Survive?*, London: Continuum, 2003; Jervis, Paul (ed.), *Resolving the European Crisis: Perspectives on the Future of the European Union*, Middlesex: Middlesex University Press, 2005.

11 See Frankenberg, Günter, "The Return of the Contract: Problems and Pitfalls of "European Constitutionalism"," *European Law Journal*, 6.3 (2000): 257-276.

12 The signatories of the Treaties of Rome were: for Belgium Foreign Minister Paul-Henri Spaak and the Secretary General of the Belgian Economic Ministry, Count Jean-Charles Snoy et d'Oppuers; for France Foreign Minister Christian Pineau and his State Secretary Maurice Faure; for the Federal Republic of Germany Chancellor Konrad Adenauer and the State Secretary in the Foreign Office Walter Hallstein; for Italy Prime Minister Antonio Segni and Foreign Minister Gaetano Martino; for Luxembourg State and Foreign Minister Joseph Bech and the Ambassador of Luxembourg in Brussels Lambertus Schaus; for the Netherlands Foreign Minister Joseph Luns and the Director for Montan Integration in the Dutch Economic Ministry Johannes Linthorst Homan.

Map 1: European Union (2008)

Based on these achievements and the fact that the European Union does not want to constitute a state in the classical sense of the word, it has been argued that the EU does not need a genuine Constitution. Some analysts have maintained the view that it would, in fact, be impossible for the enormously diverse European Union to agree upon any constitutional framework. The agreement on the Treaty Establishing a Constitution for Europe, after all signed by twenty-five responsible and democratically elected governments, has proven these skeptics wrong. The subsequent double ratification crisis only sharpened the awareness of the challenges inevitably linked with the ongoing constitution-building process of European integration.[13]

The relationship between democracy and constitutionalism has not been clarified once and for all with the double rejection of leadership propositions by informed citizens in selected EU member states. The continuing EU's constitutionalization will bring about further empirical and theoretical clarification and new contestations at each future level of agreement. The ongoing constitutional interpretation and review will continue to transform politics in the European Union from a sphere of negotiated compromises in elite-institutions to a sphere of publicly debated goals. It will continue to politicize the integration process and strengthen the claim that the EU is a community of destiny. The idea of Europe being a community of values has become a legal framework with a political face. In the meantime, the European Union has consolidated its role as the expression of political Europe. The Council of Europe, founded in 1949 as the first pan-European institution, has been relegated to a role in the process of protecting of human rights and contributioning to the European identity. The Council of Europe, to recall Walter Bagehot's classical distinction of the two parts of the British constitution, represents the symbolic parts of the European constitution; only the European Union represents the efficient part of the European constitution.[14] The European Union is the political center of Europe and it is increasingly at the heart of its multilevel governance system. This political fact of undeniable weight carries the EU beyond the formal textual basis of its *acquis communautaire.* While European law gives order to European integration, European governance gives authority to it.

13 On the issue of constitutionalization of European integration see Craig, Paul, "Constitutions, Constitutionalism and the European Union," *European Law Journal*, 7.2 (2001): 125-150; Gerstenberg, Oliver, "Expanding the Constitution Beyond the Court: The Case of Euro-Constitutionalism," *European Law Journal*, 8.1 (2002): 172-194; Mancini, Giuseppe Federico, *Democracy and Constitutionalism in the European Union*, Oxford: Hart Publishing, 2000; Pernice, Ingolf, "Multi-Level Constitutionalism in the European Union," *European Law Review*, 27.1/6(2002): 511-529; Lorente, Francisco Rubio, *Constitutionalism in the "Integrated" States of Europe*, Cambridge/Mass.: Harvard Law School, 1998; Ward, Ian, "Beyond Constitutionalism: The Search for a European Political Imagination," *European Law Journal*, 7.4 (2001): 24-40; Weiler, Joseph H. H., and Marlene Wind (eds.), *"European Constitutionalism:" Beyond the State*, Cambridge: Cambridge University Press, 2003; Wiener, Antje, "Evolving Norms of Constitutionalism," *European Law Journal*, 9.1 (2003): 1-13.

14 Bagehot, Walter, *The English Constitution*, Boston: Little Brown, 1873.

Democracy, the rule of law, respect for minorities, a corruption-free market economy – these became the official criteria for EU membership in 1993 (the Copenhagen Criteria) and thus have become the guidelines for membership negotiations since the mid-1990's. In fact, the EU stated that all European countries that comply with or accept the *acquis communautaire* are eligible for membership. The EU insists that its approved substance of common law and policy procedures should be the benchmark for future membership. This pre-constitutional criterion has become the guideline for the process of membership negotiation. The enlargement marathon was not completed with Bulgaria and Romania joining in 2007. It might well last until the end of the second decade of the twenty-first century in the course of which all of Southeast Europe (including Turkey) and possibly further Western European countries (Norway, Iceland, Switzerland) could potentially join the EU. Considering that the Ukraine, Moldova and Belarus are also sometimes mentioned as potential EU members, that in the long run full democratization and market economy in Georgia might lead to that country's EU-application, and that even the chance of independence for Greenland might lead to EU application, all cannot be fully excluded over the next decades and demonstrate that the EU enlargement process could last until the third decade of the twenty-first century. For the time being, only Russian EU membership seems unimaginable, given Russia's domestic situation and the fact that Russia is and wants to remain a global power in its own right.

Notwithstanding future discourses about the geographical borders of Europe, the political finality of European integration will not be answered by any geographical limit to EU membership. Whether or not the European Union will or can at some point overlap with the geographical scope of the Council of Europe is doubtful – even irrelevant – for outlining the political finality of the political borders of the EU. While the Council of Europe defines Europe geographically in the most inclusive way, the European Union has always defined and will continue to primarily define Europe in a political sense. During four decades of creating a common market and after more than a decade of preparing for enlargement into post-communist Europe, the political aspirations of the integration rationale have often been blurred or overshadowed. Moreover, they remain contested. Many inside and outside the EU still favor a lose integration of markets over political integration. This ongoing normative debate cannot hide the fact that from the very beginning, the intention of the Founding Fathers of 1957 was as political as the intention of the Founding Brethren that drafted the failed European Constitution of 2003.[15] The European Union is a political project with a

15 See Loth, Wilfried, *Der Weg nach Europa: Geschichte der europäischen Integration 1939–1957*, Göttingen: Vandenhoeck&Ruprecht, 1990; Dedman, Martin, "European Integration, Origins and Motives," *Modern History Review*, 2:.9 (1997): 30-33; Alting von Gesau, Frans A. M., (ed.), *European Unification in the Twentieth Century: A Treasury of Readings*, Nijmegen: Vidya Publishers, 1998; Burgess, Michael, *Federalism and European Union: The Building of Europe 1950-2000*, London: Routledge, 2000; Bonnefous, Edouard, *La construction de l'Europe par l'un de ses*

political ambition. The deepening of European integration has, therefore, always been the essential precondition to make any enlargement process successful.

The latest crisis in integration escalated during the dual process of accommodating twelve new EU member states while at the same time trying to deepen the constitutionalization of the European Union. This crisis was part of a larger process of adaptation and recalibration. The first cracks in the traditional wall of integration solidarity had already begun during the 1980's. When Great Britain's Prime Minister Margaret Thatcher demanded "her money back", it became evident that the consent for defining European interests was frail. Increasingly, the original question of European integration – "what can we do together?" – was steadily replaced by the search for the very limits of European integration. The fear of too strong integration effects became as vocal as the ambition to move ahead in deepening integration. Instead of defining European integration by its potential, the quest for limiting its effects was spreading across the member states of the EU. The more European integration advanced, the more its prerequisites came under pressure, i.e., reciprocal solidarity and recognition of a common law-based political aspiration. By the early twenty-first century, Europeans desired to become a world power. But they did not want to pay the price for it.[16] In many ways, their political leaders had acted in a similarly paradoxical way. European Union matters absorbed more and more of their time in office, yet they tried to relegate its effects and limit the implications of their own deeds. The uncertain question "What kind of Europe" was already in the air before the crisis over the European Constitution broke out[17] Its aftermath will last longer than the technical solution of this crisis in deepening integration. The European Union will not be allowed to stop in solidifying its legitimacy of being a law-based genuine body politic.

2. Constitutionalizing the Acquis Communautaire

The legal and political core of European Union is enshrined in the *acquis communautaire.* Not too many EU citizens will be able to properly define what this term means. In the context of the eastern EU-enlargement in the early years of the

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initiateurs, Paris: Presse Universitaire Française, 2002; von der Groeben, Hans, *Europäische Integration aus historischer Erfahrung: Ein Zeitzeugengespräch mit Michael Gehler*, ZEI Discussion Paper C108, Bonn: Center for European Integration Studies, 2002; Dinan, Desmond, *Europe Recast: A History of European Union*, Boulder: Lynn Rieffer, 2004.

16 See *Frankfurter Allgemeine Zeitung*, "Europäer wollen Weltmacht sein," September 7, (2005): According to an opinion poll taken by the German Marshall Fund of the United States, seventy percent of European citizens expressed their desire that the EU should become a world power similar to the United States. But only 44 percent of EU citizens were ready to accept higher military spending for achieving that objective.

17 See Tsoukalis, Loukas, *What Kind of Europe?*, Oxford: Oxford University Press, 2005 (2nd rev. ed.); see also Mendrano, Juan Diez, *Framing Europe: Attitudes to European Integration in Germany, Spain and the United Kingdom*, Princeton: Princeton University Press, 2003.

twenty-first century, the *acquis communautaire* seemed to be better known in post-communist members of the EU than in the older member states. Their societies, legal systems and political regimes had to undergo a fundamental transformation prior to being allowed to join the EU. The term *acquis communautaire* became synonymous with the EU.[18] In Western Europe, among the fifteen "old" EU member states, the term *acquis communautaire* had never gained that much "fame" – neither positive nor negative. This was astonishing, because in reality also Western Europe was increasingly influenced by the *acquis communautaire* – that is to say by EU law – and had, in fact, brought it about.[19] The term *acquis communautaire* was and remains part of the technocratic jargon known to EU experts. In order to give Europe a soul and in order to reach the hearts of EU citizens, it would be necessary to define Europe in other terms. It would be necessary to demonstrate European integration as a success story for its citizens. It would be necessary to demonstrate that the EU could work effectively and efficiently. It would simply be necessary to define Europe again from its opportunities instead of burdening Europe by focusing only on its limits. This will remain the central leadership test for many years and well beyond the technical solution to the constitutional issue.

Whether taken seriously in public or not, the existence of the *acquis communautaire* has always demonstrated that the European Union is not only about rhetoric and diplomacy. The European Union is about the evolution of a common European law, a common European market, and a common European body politic. It is important to reiterate that European integration is not heading toward a superstate, but it is clearly more than an effort to create a common market.[20] Eventually, the European Union is about the formation of a community of law and common political destiny as the basis for a new global presence of Europe. In the early twenty-first century, only few observers and actors seem to be more optimistic than Europeans themselves about this prospect.[21]

For the enlarged European Union to succeed, it requires to connect its growing global role with the steady deepening of the integration process. This, of course, has implications not only for EU institutions, but also for the societies of all its member states. The broader European public – including the political elites – has only recently begun to take note of the fact that the EU is also streamlining national priorities in order

18 See Krenzler, Horst Günter (ed.), *Preparing for the Acquis Communautaire: Report on the Working Group on the Eastern Enlargement of the EU*, Florence: European University Institute, 1998.

19 See Craig, Paul, and Grainne de Burca (eds.), *The Evolution of EU Law*, Oxford: Oxford University Press, 1999.

20 See Gillingham, John, *European Integration, 1950-2003: Superstate or New Market Economy?*, Cambridge: Cambridge University Press, 2003.

21 See Rifkin, Jeremy *The European Dream: How Europe's Vision of the Future is Quietly Eclipsing the American Dream*, Cambridge: Polity Press, 2004; Leonhard, Mark *Why Europe will Run the twenty-first Century*, London, Fourth Estate, 2005; Verhofstadt, Guy, *The United States of Europe*, London: Federal Trust, 2006.

to forge a law-based economic and political union. The people of the EU are increasingly learning that this has consequences for their respective national political and socio-economic systems.[22] It should not come as a surprise that this realization provokes skepticism and resentment. Yet, it will continue to be a European reality.

From its very beginning, the European integration process has included a constitutional dimension. The 2007 Reform Treaty, despite its fateful rejection in the Irish referendum of 2008, was nothing but the most recent expression of this trend that has grown over the first fifty years of European integration. It adds substantial weight to the primacy of the European Union in European governance and its *acquis communautaire* as the central legal body in Europe. The EU is not just about shared interests. It is increasingly also about shared destiny. This is why it can legitimately be considered a community of values.

Democracy is not unique about Europe. What is unique about Europe is the way Europeans have made use of democratic rule in their individual countries in order to set up a new political, legal, and economic order for their common continent.[23] What is unique about European integration is the consistent amalgamation of democratic nations into a Union based on law, consensus oriented policy processes, parliamentary governance with a strong executive, and a treaty-based constitutionalization. This transformation is generating pooled sovereignty and pooled democracy of EU member states and Union citizens, yet it preserves the individual nations and states as they have developed in the course of Europe's long history.

This politicized and constitutionalized Europe is unique compared with past modes of organizing and orchestrating interests and principles in Europe's order. A strong economy, growing into a common market, generated respect for European integration during the five decades of its existence. At the turn of the century, Europe had to go through an adaptation crisis. Yet, it has maintained its path and regained a certain sense of direction. In the decades ahead, it is this political dimension that will define the role and recognition of the European Union as a strong international player. There is an increasing realization – inside as well as outside of Europe – that Europe's affluence and social cohesion are rooted in the political and constitutional order of the continent. The order is not only the consequence of coordinated or pooled economic policies, but also the result of and the engine for further political and constitutional developments.

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22 See Green Cowles, Maria, et al. (eds.), *Transforming Europe: Europeanization and Domestic Change*, Ithaca/London: Cornell University Press, 2001; Goldmann, Kjell, *Transforming the European Nation-State*, London: SAGE, 2001.

23 This thought is echoed in the philosophical discussion about European identity in Brague, Remi, and Peter Koslowski, *Vaterland Europa: Europäische und nationale Identität im Konflikt*, Vienna: Passagen Verlag, 1997. Brague talks about Europe as not being a tradition, but a horizon and a goal (page 38), while Koslowski compares European integration with the "translatio imperii" from the Roman Empire to the world of the Franks under Charlemagne, based on a limited mandate which is also the case with European Union competencies; on the origins of Europe see Davies, Norman, *Europe: A History*, Oxford: Oxford University Press, 1996: 213-290 ("Origo. The Birth of Europe AD c. 330-800").

The emerging European constitutionalism is both an answer to Europe's struggle with identity and the foundation for preserving freedom and affluence in the age of globalization through political means.

Democratic theory recognizes people for what they are and who they are. It promotes political and personal freedom in the name of the recognition of the individual. Checks and balances serve the pursuit of individual freedom and the protection of human rights. Democracy tends to mistrust institutions while institutions tend to tame democratic aspirations as absolutes. Constitutional procedures emphasize authority over freedom, while democracy tends to do the opposite. Yet, the lasting authority of a constitution depends largely upon the degree to which it can generate and guarantee freedom and democracy. This is why non-democratic constitutions lack legitimacy. Constitutions that reconcile democratic aspirations with the ability to generate authority and result-oriented decision-making through political processes tend to have a higher degree of legitimacy in the eyes of the citizens living under them. It can create and reproduce sustainable constitutionalism.[24]

All constitutions in the contemporary world provide for representational institutions, normally in the form of parliaments. That is why parliamentary democracy has become the most respected form of constitutional government. This theoretical understanding is at the root of reasoning about parliamentarian democracy, as it has become the guiding principle for governance in a constitutionalized European Union. Still, it is an emerging parliamentary democracy, which is multilayered and encompasses the national as well as the European parliaments, and it certainly remains incomplete as a constitution-based body politic.

Europe's evolving political order is a continent-wide continuation of the individual national European experiences in the age of early constitutionalism in the nineteenth century. The trend toward parliamentary and constitutional rule at the national level, which was repeating itself in stages, can be observed with detours and under different historical circumstances at the level of the European Union. All European nation states have grown from pre-constitutionalism to constitutionalism. As an emerging parliamentary and constitutionally-based democracy, the European Union follows the journey of parliamentary democracy in most European states over the past two hundred

24 See Bellamy, Richard (ed.), *Constitutionalism, Democracy and Sovereignty: American and European Perspectives*, Aldershot: Ashgate, 1996; Alexander, Larry, *Constitutionalism: Philosophical Foundations*, Cambridge: Cambridge University Press, 1999; Sajo, Andras, and Stephen Holmes, *Limiting Government: An Introduction to Constitutionalism*, Budapest: Central European University Press, 1999; Sampford, Charles, *Beyond the Republic: Meeting the Global Challenges to Constitutionalism*, Sydney: Federation Press, 2001; Gordon, Scott, *Controlling the State: Constitutionalism from Ancient Athens to Today*, Cambridge/Mass.: Harvard University Press, 2002; Berggren, Niclas, and Nils Karlson, "Constitutionalism, Division of Power and Transaction Costs," *Public Choice*, 117.1/2 (2003): 99-124.

years.[25] For the time being, the rule of law is stronger in the European Union than democracy while democracy is stronger than transparency.

The revival of parliamentary democracy in Western Europe after World War II stood in contrast to the prevailing totalitarian systems in the communist-ruled part of Europe. Nevertheless, the revival of Europe after a century of bloody national and ideological warfare was based on the principle of constitutional democracy. This revival began after 1945 on the national level – most remarkably in Italy, Germany and France, later followed by Greece, Spain and Portugal – and it has grown gradually to the European level. It is not surprising that most post-communist countries in Europe were heading in the very direction of redefining their political system as one based on parliamentary and constitutional rule of law after the peaceful revolutions of 1989. Theirs were revolutions in the name of freedom and democracy, intended to catch up with the established parliamentary democracies of Western Europe. Hence, it was logical and consistent that the quest in Central Europe to join the European integration structures was coupled with the effort to streamline their national political systems with the parliamentary-based democracies, constitution-based rule of law, and market-based economies in Western Europe. Since the late 1980's, the European integration process has increasingly been influenced by the promotion of the idea of a European Constitution. In hindsight this is not a mysterious surprise, but rather a logical consequence of the systemic reconciliation among European states and the national reconciliation among European people. The national experience of parliamentary democracy as the expression of political identity under conditions of freedom and rule of law found its echo at the level of the European Union. This was further proof of the over-lap of multilayered, multiple identities within the multilevel system of European governance.[26]

25 On the early national constitutionalism in Europe see Dippel, Horst (ed.), *Die Anfänge des Konstitutionalismus in Deutschland: Texte deutscher Verfassungsentwürfe am Ende des 18. Jahrhunderts*, Frankfurt/Main: Keip, 1991; Hye, Hans Peter, *Das politische System in der Habsburgermonarchie: Konstitutionalismus, Parlamentarismus und politische Partizipation*, Prague: Karolinum, 1998; Dippel, Horst (ed.), *Executive and Legislative Powers in the Constitutions of 1848-49*, Berlin: Duncker&Humblot, 1999; Kirsch, Martin, *Monarch und Parlament im 19. Jahrhundert - Der monarchische Konstitutionalismus als europäischer Verfassungstyp: Frankreich im Vergleich*, Göttingen: Vandenhoeck&Ruprecht, 1999; Kirsch, Martin, and Pierangelo Schiera, *Denken und Umsetzung des Konstitutionalismus in Deutschland und anderen europäischen Ländern in der ersten Hälfte des 19. Jahrhunderts*, Berlin: Duncker&Humblot, 1999; Kirsch, Martin, et al. (eds.), *Der Verfassungsstaat vor der Herausforderung der Massengesellschaft: Konstitutionalismus um 1900 im europäischen Vergleich*, Berlin: Duncker&Humblot, 2002.

26 Earlier efforts to draft a European Constitution remained academic exercises or precursory visions of politicians, such as Altiero Spinelli's work in the European parliament. The hope of matching the path toward monetary union with a path toward political union failed during the process that led to the Treaty of Maastricht in 1991. Nevertheless, the discourse about a European Constitution gained momentum during the 1990s – as a reaction to the institutional crisis which stemmed from the insufficient work of Intergovernmental Conferences during the 1990s and their incremental yet increasingly contradictory strife for institutional reforms.

After World War II, Western Europe had experienced a period of constitutional reconstruction as the answer to totalitarian politics. After 1989, a second wave of constitutional reconstruction took place in post-communist Europe. It was the second answer to totalitarian politics. In the early twenty-first century, both processes came together in the quest for a genuine European Constitution giving a political frame to united Europe. Even in their rejection by three different European people, the European Constitution and the subsequent Reform Treaty remain part of a gradually emerging constitutionalization of the European Union, an experience that has begun with the Treaties of Rome. This process was shaped by further treaty revisions, most notably the Treaty of Maastricht (Treaty on European Union). The cumulative European constitution-building has already had and will continue to have ramifications for the individual democratic nations of Europe. They continue to gradually, yet cautiously, pool their constitutional sovereignty on the European level. Constitution-building on the European level affects the identity of the citizens of Europe, while it is inspired by a European broadening of the various national and regional identities in Europe. Unavoidable, European constitution-building impacts the political system of each member state of the EU. Resistance to a speedy continuation of this trend is rather natural. With all the accompanying skepticism, Europe is experiencing the increasing political dimension of a shared identity and destiny.

The constitutionalization of Europe raises the question about the degree of authority that can be expected from the European Union – what it represents to constitute the means to give form and direction to a political entity. A constitution is considered to be supreme law and should frame, or at least guide, a political system. It is useful to distinguish "between the authority a text asserts and the authority it exerts."[27] It remains open to historical judgment whether or not the European Union can claim a sustained degree of authority national constitutions have been able to accrue in the history of Europe. The question of whether or not the current European pre-constitutionalism can grow into full-fledged European constitutionalism will be answered by an open future.

Based on historical experience, constitutions can fulfill different functions:[28]

- They can be purely cosmetic in which case either a nation or a political system can hide its true intentions or failures behind the curtain of constitutional rhetoric.
- They can serve as a Charter for government, which is to say the constitution sketches out the rules of operation of a legitimate government, irrespective of the social fabric of the society which the government will shape.
- They can explicitly serve as guardian of fundamental human rights and values

27 Murphy, Walter F., "Constitutions, Constitutionalism, and Democracy," in: Greenberg, Douglas, et al. (eds.), *Constitutionalism and Democracy - Transitions in the Contemporary World*, New York/Oxford: Oxford University Press, 1993: 8.

28 Ibid.: 8-17.

and thus delineate the scope of political authority in order to protect basic human rights and fundamental values of a body politic.

- They can serve as the founding document of a body politic and as a symbol of its aspiration; by doing so, constitutions can be the foundation stone of a new political entity and serve the function of a covenant.

The existing cumulative European Constitution – the set of Treaties from Rome to Nice and, in a way, also to Lisbon – entails elements of all these functions as experienced in the history of constitution-building linked to nation states. The cumulative European Constitution challenges those who assume that a European Constitution can only be of a cosmetic nature. The European Union has become a genuine governance system although it does not represent a state in the traditional sense of the word.

More than five decades after the beginning of the European integration process, the difficult yet continuing constitutionalization of the European Union coincides with fundamental trends in European integration and anticipates some trends which will unfold as the twenty-first century develops:

- Internally, the European Union is challenged by the need to absorb its biggest and most complex enlargement and it will have to complete the enlargement process toward South Eastern Europe. Regional economic asymmetries and a strong gap between experiences and expectations accompany the consequences of enlargement toward post-communist countries in 2004 and 2007. At the same time, the European Union is confronted with the consequences of an aging population, thus putting even more pressure on the future struggle over social policies and the reallocation of limited resources.
- The European Union faces globalization and the challenge of the economic and social dynamics outside Europe while it has severe difficulties to convince the world that it ought to be considered the most innovative and dynamic economy. The biggest challenge for the EU in managing globalization relates to its ability to pursue internal structural economic reforms and generate coherent and efficient decision-making structures and mechanisms of implementing joint policies, which can support sustainable innovation and social dynamics. Simultaneously, the EU needs to grow into a force that is capable and willing to contribute to the global projection of stability and the management of the global political and economic system.
- In order to cope with internal frustration and external expectation, the European Union faces the need to gradually, but consistently politicize its identity and become a global political actor. The EU needs to better define policy preferences and priorities. It is not enough to accept economic path dependencies. Supporting diversity in unity cannot be accomplished by traditional means of promoting cultural identity. It requires the European Union to grow from a

community of institutions and organs into a community of practical will and political destiny. It requires the EU to generate leadership, which is apt to the task and courageous enough to take the necessary risks. And it requires the EU to truly generate European citizens with a sense of ownership in and commitment to the process.

Thus, the order of testing the meaning and consequences of the constitutionalized European Union is tall. The practical policy processes will generate debate, controversy and compromise. The gap between expectation and reality will probably always exist. But most important for the credibility and viability of the European Union are two questions that were relevant in the history of constitution-building and constitutionalism elsewhere: who will eventually judge the legitimacy of the implications of a constitutionalized European Union for the European body politic?[29] And: In which condition and on the basis of which constitution does the European Union present itself to the world?

3. Challenge and Response: Patterns of European Identity Formation

The relationship between integration and identity has changed over the first fifty years of European integration. In the course of five decades, a study of the "deepening" and "widening" European integration can lead to some comprehensive conclusions. One of them is the fact that both of these processes were never mutually exclusive. Of course, they did not necessarily go hand in hand smoothly. At times they blocked each other. However, they never prevented each other from developing further in their own right. Sometimes new dynamics stemmed surprisingly from dialectical processes, sometimes progress was the result of trial and error or of challenge and response. In fact, this classical concept of challenge and response, introduced by historian Arnold J. Toynbee in his seminal work on world history, is the best available key to understanding and rationalizing the course of European integration. The natural oscillation of European integration represents what Toynbee called the "alternating rhythm of static and dynamic, of movement and pause and movement fundamental to the nature of the universe"[30].

Toynbee explained with great erudition that challenges instigate responses, which, of course, can be either appropriate or inappropriate. Depending on the nature of the response, challenges can lead to negative, if not catastrophic, consequences for the form they are relating to. If the response is appropriate and well focused, it will strengthen and reinvigorate the form it touches upon. As Toynbee remarks: "In the language of

29 See Kumm, Matthias, *Who is the Final Arbiter of the Constitutionality in Europe?*, Cambridge/Mass.: Harvard Law School, 1998.

30 Toynbee, Arnold Joseph, *Studies of History: Abridgement of Volumes I-VI*, New York/London: Oxford University Press, 1947: 51.

science we may say that the function of the intruding factor is to supply that on which it intrudes with a stimulus of the kind best calculated to evoke the most potently creative variations."[31] None of the trendy social science theories is better equipped to explain the paths, detours, rough roads and happy endings of European integration over the first fifty years. It has been and it remains a path of challenges and responses.

This is, of course, not indicating that the rationale of this process (or rather, these processes) can simply be reduced to one specific explanation. If this were the case, we would approach deterministic notions of history that run counter to social theory and anthropological evidence. Nevertheless, it is not too far-fetched to outline the history of European integration as a permanent set of responses to contingently changing challenges. They were, of course, always executed by a series of political processes with their genuine strategic and tactical logics. But these were instrumental actions in reaction to structural challenges. The logic of "challenge and response" is the most comprehensive frame one can put around the many existing theoretical efforts to conceptualize European integration, why it began and how it developed.[32]

The most serious challenge for the creation of a new Europe stood at the very beginning. The destruction of Europe in two wars and the democratic revitalization of its Western regions (West Germany included), with the help of America's enlightened, but not selfless Marshall Plan, the founding of NATO, and the continuous strategic presence of the US as a European power, marked the beginning of Europe's second renaissance. The first renaissance can best be understood by Leonardo da Vinci's ambition to build a bridge wherever he saw a river and by Blaise Pascal's fear in face of the dark open sky at night. Europe's second renaissance is likewise driven by hope and fear.

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31 Ibid.: 63.

32 In his small and concise book *The Origins and Development of the European Union 1945-1995* Martin Dedman (London: Routledge, 1996: 7-33) describes the three most influential approaches to the theory of European integration, although it remains questionable whether they can really be called "theories" or should rather be referred to as comprehensive assessments of analysis: 1.Functional theory that dominates contemporary Political Science. It assumes that an increase in international cooperation and consequently in integration is the logical precondition for states to enhance their scope of action in the modern state system. The scholarly works of David Mitrany (*A Working Peace System: An Argument for the Functional Development of International Organization*, New York: Russel&Russel Inc., 1943) and Ernst Haas (*The Uniting of Europe: Political, Social, and Economic Forces 1950-1957*, Stanford: Stanford University Press, 1958) laid the ground for this most influential integration theory. 2. Ideological approaches refer to the growth and influence of European federalist movements in the interwar period and during World War II. The erudite work of Walter Lipgen's (*Documents on the History of European Integration*, 2 Volumes, Berlin/New York: de Gruyter, 1985 and 1986) has contributed the best possible insights into their quest for a new normative beginning in building a European order. 3. Historical-systematizing research has focused primarily on the period from the Treaties of Rome until the Treaty of Maastricht. Alan Milward (*The European Rescue of the Nation State*, London: Routledge, 1992) in one of the most influential works of this nature has argued that integration occurs only when it is needed by the states that come together. Andrew Moravscik (*The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*, Ithaca: Cornell University Press, 1998) has elaborated on the theme that European integration strengthened the European nation-states.

After 1945, the return of a Hitler-like dictator – anywhere, but mainly in Germany – or Stalin taking over all of Europe was as deep a fear as the hope of reinvigorating Europe's economic, social and cultural resources. The rise of an integrated Europe coincided with the end of Europe's colonial ambitions. This helped to convince the French to support the project of European integration although it did not prevent them from keeping their British rivals out as long as possible. Furthermore, integration was Germany's best choice in regaining recognition after the horrendous legacy of Hitler's totalitarian terror, with the Holocaust as its culmination, his war and Stalin's victory with the division of Europe as the most bitter and lasting price. West Germany's rehabilitation through integration coincided with the interests of the other Founding members of the European Economic Community. Italy was in a somewhat similar although less dramatic situation than the Germans were, because Mussolini's Fascism, as bad as it had been, paled by comparison to Hitler's totalitarian regime, a system whose communist variant prevailed behind the Iron Curtain after 1945. Meanwhile, Belgium, the Netherlands and Luxembourg were traditionally favorably disposed toward international and intra-European cooperation. Thus it is not surprising that many initiatives (and leaders) in support of European integration originated in these three countries.

The history of European integration has produced its own culture of memory. Some even go so far as saying that Europe's integration is the new great, triumphal story of our time.[33] It is certainly true that common experience, continuous testing through crises, and symbolic and substantial achievements have generated joint memories and shared feelings all across the European Union. They contribute to an evolving European political identity. It is a constructionist evolution. It is the ongoing work on a political construction site.

The relationship between "challenge and response" can be studied in many specific cases that are part of the integration experience. Most importantly, however, it can be detected in the context of the two most defining phases of integration development: The defining periods from 1945 to 1957 and from 1989 to 2009.

- The Treaties of Rome and the creation of the European Economic Community in 1957 were the ultimate European responses to the end of World War II and the renaissance of parliamentary democracy in the countries of Western Europe in 1945.
- The political proposal to deepen European integration through the advanced and formalized constitutionalization of European politics until 2009 was the ultimate response to the re-unification of Europe that began in 1989. It was also the beginning of a new era in European integration in which democracy and the

33 Peter Koslowski cites Japanese philosopher Naoshi Yamawaki as one of those points to the process of European integration as the greatest master story of our time, Brague, Remi, and Peter Koslowski, *Vaterland Europa*, op.cit.: 70.

participatory claims of Union citizens were entering the multilevel governance system of the EU, clashing with the elite-driven character of the past.

Both defining periods encompass complex historical developments that must be analyzed in their own right. Both ended with successful institutional and constitutional results in combining two factors whose relationship has been debated as mutually exclusive, the "Deepening" and "widening". In 1957, integration started with six European countries and it became successful only because they brought about treaty-based common supranational institutions. At the signing of the Reform Treaty in 2007, European integration had advanced to 27 European countries. It could only remain successful over time through deepened integration in a constitutionally based supranational community of law, common interests, values, institutions and policies. Obviously, the EU needed more than new legal and constitutional provisions. It was in continuous need of a much stronger and focused "European spirit," which politicians like to invoke in order to appeal to European solidarity. The more successful the original integration process had become, the more Europe needed to widen and to include additional European countries that wanted to join the EU. The larger Europe has grown, the deeper the integration process inevitably needs to become. Understanding this dialectic as part of the mechanism of "challenge and response" is not always shared in the scholarly literature on European integration. Yet, the mechanism of "challenge and response" – coupled with the importance of leadership during critical periods for EU politics – is closer to the empirical evidence than many theory-driven assessments of the process of integration in Europe.

The founding of the European Economic Community in 1957 was the deepest structural response to the end of World War II in 1945, but it could not prevent the European Economic Community from encountering its own crises. Over time, while it developed from the European Economic Community into the European Community and ultimately into the European Union, the "original crises" of war and peace had been resolved through the aspiration of a common market. To stand against Soviet expansion, and to do so under the security umbrella provided by the United States with the creation of NATO, was the external constellation and condition under which Western Europe succeeded. Other crises followed over the next decades, in the end understood as crises in integration and not crises of integration:

- The crisis that broke out after the French National Assembly refused to ratify the European Defense Community in 1954 that France itself had launched two years earlier.
- The failure to proceed with concepts of political integration after the governments of the six member states refused the proposals for political integration expressed in two Fouchet Plans in 1961 and 1962 that they had commissioned themselves.
- The Luxembourg Compromise, which brought France back into the EEC

institutions in 1965 after France had left over disputes on agricultural policies.

- The failure of the EEC to implement the Werner Plan of 1970 that outlined the path toward monetary union and a common currency over the decade of the 1970's, which then had to wait until 2002 to become a reality.
- The frustrating refusal of the Treaty of Maastricht by the majority of Danes in a referendum in 1992, finally neutralized by the "invention" of dubious "opting out-clauses" for Denmark that helped to bring the majority back on the path of integration.
- The crisis over constitution-making that was brought about by the EU Heads of State and Government in December 2003 when they were initially unable to agree on the draft Treaty Establishing a Constitution for Europe which the Constitutional Convention had presented to them in unanimity in June 2003. Last minute compromises were found by the EU heads of state and government in the summer of 2004, which were face-saving although not uplifting.
- The double crisis of ratification which derailed the Treaty Establishing a Constitution of Europe and the subsequent Reform Treaty. More than ever, the political establishment in the EU is now forced to focus on a new contract between EU institutions and EU citizens by delivering a "Europe that works."

In summary, European integration has been nurtured, pushed forward and shaped by crises: It is as if crises were often the best engines for European integration.[34] But it can be said that all crises were crises in integration that never escalated into crises of integration. In this sense, also the constitutional crisis of the first decade of the twenty-first century must be considered a crisis of adaptation. The Treaty Establishing a Constitution for Europe in 2004 was intended to be the ultimate response to the challenge that the end of communist totalitarianism and the fall of the Iron Curtain had posed to the concept of European integration.[35] It was the last effort to pursue European integration as a top-down process. Although the Constitutional Convention had been the best possible indication for a change in the method of advancing institutional reforms in the EU and for the necessary broadening of popular participation in any further European integration, this effort was obviously neither enough nor convincing; it was not successful. With the crisis that broke out when France and the Netherlands said "no" in referenda, Europe's political elites were shocked. They drew, however, the wrong conclusion by retrenching to backdoor politics instead of fully democratizing the future process of constitutionalizing Europe. When Ireland said "no", too, they paid the bill for this unconvincing behaviour that undermined their credibility but did not destroy European integration.

34 See Kirt, Romain (ed.), *Die Europäische Union und ihre Krisen*, Baden-Baden: Nomos, 2001; Kühnhardt, Ludger (ed.), *Crises in European Integration: Challenge and Response 1945-2005*, Oxford and New York: Berghahn Books, 2008.

35 See Kühnhardt, Ludger, *Revolutionszeiten: Das Umbruchjahr 1989 im geschichtlichen Zusammenhang*, Munich: Olzog, 1994 (Turkish edition 2003).

"Challenge and response" accompanied the defining periods of European integration as much as many smaller events and developments during the first fifty years of its existence. No blueprints were available, no theory could be followed, but in the two most critical defining periods of European integration until this day, the actors involved had to cope with a web of challenges and bring about a web of answers. During both periods the process of framing a European answer to a European challenge was linked to the formulation of a European answer to the issue of transatlantic relations. In other words, whenever European integration went through defining critical years, transatlantic relations were undergoing parallel developments of uncertainty, crises and adaptation.

- The period from 1949 (the founding of NATO) until 1957 (the signing of the Treaties of Rome) was crucial for the making of the West. It was an integral part of the evolution of the European integration process.
- The period from 1991 (Yugoslavian Wars, Iraq Wars) until 2009 (reconstruction of Iraq and Afghanistan, EU and NATO enlargements, a new US presidency, new elections to the European Parliament) was crucial for redefining transatlantic relations. The search for a post-Cold War frame of mind was also essential inside Europe.

During both of these defining periods of European integration and of the concept of "the Western World," the Atlantic civilization several times went through divergent experiences: In 1945, Europe's self-destruction had ended with America's continuous presence as a European power. Immediately, a common frame of mind was organized around the notion of defending Western freedom against Soviet hegemony. After 1989, and especially after 2001, Europe and America had to gradually reconcile contrasting implications of "11/9" – the fall of the Berlin Wall on November 9, 1989 as Europe's "11/9" – and "9/11" – the terrorist attacks on New York and Washington on September 11, 2001. At the end, the transatlantic partners had no alternative but to come together again as the main agents of managing world affairs.

Between 1949 and 1957 three complex issues intertwined in the parallel and overlapping processes of shaping the European and the transatlantic architecture:

- The outbreak of the Cold War and Soviet expansionism, followed by the wars in Korea and Indochina as well as the Suez Crises, made France and Great Britain realize the limits of their global role. The ensuing US-Soviet hegemonic struggle facilitated the American guarantee for Europe's security.
- The start of functional European integration through the European Coal and Steel Community turned out to be a highly successful way of matching various ideas about integration and conflicting interests. Eventually, European integration turned into the most successful structure for rebuilding Western Europe as a society of affluence and freedom and a loyal partner of the United States.
- The establishment of an institutional network with NATO as the strategic and

military insurance policy for rebuilding Western Europe, the Council of Europe as a loose community of European values, and the European Economic Community as the first step to political integration in Europe were mutually supporting elements of a new and sustainable European peace order with the United States as one of its corner stones.

Between 1989 and 2009, again, three decisive and interconnected issues shaped the path of European integration and the transformation of the Atlantic community:

- The introduction of the euro opened the way to the further transfer of sovereignties from the national level to the supranational level of the European Union. A common European currency had a long-term impact on the American perception of European integration. United Europe eventually had to be taken seriously, eventually also as an emerging Home Affairs Union and a Foreign, Security and Defense Union.
- The enlargement of the European Union with post-communist countries went hand in hand with the gradual enlargement of NATO (by 2008 twenty-six NATO members and twenty-seven EU members were anticipating further enlargements) and proved that the Euro-Atlantic institutions remained valid as the core for the projection of stability beyond their own territory in a world facing enormous opportunities as a result of globalization, but also serious new threats emanating from the modernization crisis in the Broader Middle East, the terrorist threat of Islamic totalitarianism, and the proliferation of weapons of mass destruction.
- Ultimately, the most serious adaptation crisis in the history of transatlantic relations in the aftermath of the terrorist attacks of September 11, 2001 had to bring the US and Europe back as each others closest partners in managing world affairs. Neither the global economy nor any geopolitical challenge was handled successfully without joint transatlantic action.

European integration has never followed a theoretical blueprint. It is therefore hard to characterize and assess through the categories of theoretical models and concepts. European integration is constructionist and actor based, largely elite driven, often a response to external challenges and internal crises; its results have rarely been the consequence of simple and easy decisions. Often they were accompanied by frustrating detours. Almost always they were of an incremental and difficult nature. The governance system of the European Union still is contradictory and clumsy, its decision-making processes often non-transparent and inefficient. However, the alternative warrants consideration: The price of non-integration would be too high. Fragmented and limited national markets and weakness in the international arena can only be overcome by participating in a common European effort. Maintaining national exceptionalism because of a diverse national cultural identity is no longer a positive option for the vast majority of European states.

The existing nation states of Europe reflect the cultural diversity of the continent. They are a cultural product with strong political bonds holding them together. Yet, alone they are incapable of delivering most of those goods to their citizens for whom they were created in the first place for security, stability, and affluence. This is why European integration has become a political "must" for practically all-European countries. In order to preserve their cultural diversity and identity, European states and societies need to participate in the shaping of a joint political identity. Only a European frame of mind allows the growth of common interests and forms of solidarity. This transformation of culture and politics in Europe is neither easy nor can it be completed rapidly. Yet, it has been occurring for more than five decades, and it is shaping the political culture of Europe. It would not be overly speculative to assume that it will take another five decades before a comprehensive form will finally solidify. It will need to combine function and legitimacy of European integration with the interests, values, and multiple identities of the majority of EU citizens.

At the core of the transformation of the European order of states and people is the changing character of identity. In the past, matters of identity were limited to their role in shaping national public life. In the European Union, matters of identity become increasingly related to a common political will and destiny in Europe. As the European integration process is beginning to cut deeply into the domestic structures of all member states and nations, political identity is becoming the logical consequence of the European Union as a community of values.[36] The European Union represents the multiple identities in a diverse European culture.

The origins of the European integration process are an answer to the exploitation of European differences in the name of nationalism and even racism. After the antagonistic clashes and collective destructions of Europe's internal order and external relevance, the Founding Fathers of European integration were convinced that they had to define common interests and shared perspectives in order to overcome a culture of hatred and mistrust. They began with the economy. All too often, the subsequent path of European integration was accompanied by skepticism among intellectuals. Often, Jean Monnet[37] is quoted as having said that if he would have to restart the integration process, he would begin with culture. Extensive research could not find proof for the quotation. Moreover, being quoted time and again and with emphasis has not substantiated the argument that Europe missed a golden opportunity by not building its integration around the notion of culture.

Following World War II, cultural mistrust was so prevalent in Europe that it would hardly have been a good mirror for choreographing the idea of European integration:

36 See Banchoff, Thomas, and Mitchell P. Smith (eds.), *Legitimacy and the European Union: The Contested Polity*, London/New York: Routledge, 1999.

37 On his legacy for European integration see Roussel, Eric, *Jean Monnet 1888-1979*, Paris: Fayard, 1996; Fransen, Frederic J., *Supranational Politics of Jean Monnet: Ideas and Origins of the European Community*, Westport: Greenwood, 2001.

Who would have trusted the Germans immediately after 1945 on the sheer basis of a good cultural tradition that had proved incapable of preventing Hitler from rising to power? Who would have accepted a French concept of cultural superiority ("mission civilisatrice") as still practiced in French colonies? And whom would the French have recognized as equal to their concept of culture? Who would have been able to link Belgian culture with British culture or Italian culture in order to create an integrated Europe? Under the given conditions, the Council of Europe did its best to give credit to and generate respect for the diversity of European culture as the basis for revitalizing a deeply humiliated and destroyed continent.[38] But culture could have hardly served as the sufficient instrument to initiate and orchestrate sustainable political integration for a divided continent in ashes. It required the rational choice to pool common yet divisive economic interests in order to construct a new Europe.

Certainly, cultural considerations and underpinnings were present during the creation of the European integration process. It has been said that the European Economic Community was a "catholic project" as many leaders of the 1950's were Roman-Catholic. Robert Schuman was Catholic, so were Alcide de Gasperi, Konrad Adenauer and Joseph Bech – it is hard to deny the religious background of some of the most important Founding Fathers of the integration process. Yet, they did not insist on mentioning culture, values or even religion in the Treaties of Rome.[39] The Founding Fathers of the European Economic Community were united in the desire to prevent the outbreak of yet another war in Europe. No matter whether Catholic, Socialist (which was mutually exclusive at the time), Liberal or Agnostic, all had experienced the disastrous escalation of nationalism and terror and were deeply convinced that only supranational cooperation and subsequent integration could revitalize Europe, its culture and self-esteem. Non-overt normative consent accompanied the preparation for the Treaties of Rome. For Roman-Catholic leaders among the six founding states of the European Economic Community supranational thinking was an indirect reflection of

38 For the most recent efforts of the Council of Europe see Council of Europe (ed.), *The European Identity: Colloquy in Three Parts Organized by the Secretary General of the Council of Europe*, Strasbourg: Council of Europe, 2001-2003.

39 The governments of the six founding states of the European Economic Community in 1957 were composed as following: Belgium: coalition of Socialists (PSB) with Liberals under Prime Minister van Acker (1898-1975), Foreign Minister Paul Henri Spaak (Socialist); Germany: coalition of Christian Democrats (CDU and CSU) with Liberals (FDP) and some smaller parties (DP and GP-GHE) under Chancellor Konrad Adenauer (1876-1967), Foreign Minister Heinrich von Brentano; France: Government of the Republican Front under the leadership of the Socialist SFIO under Prime Minister Guy Mollet (1905-1975), Foreign Minister Christian Pineau; Italy: coalition of Christian Democrats (DC) with Social Democrats (PSDI) and Liberals (PLI) under Prime Minister Antonio Segni (1891-1972), Foreign Minister Gaetano Martino; Luxembourg: Christian Democratic government (CSV) under Prime Minister and Foreign Minister Joseph Bech (1887-1975); Netherlands: coalition of Socialists (PvdA) with Christian Democrats and Liberals (KVP , ARP and CHU) under Prime Minister Willem Drees (1886-1988), Foreign Minister Joseph Luns; explicitly Catholic were Adenauer, Bech, von Brentano, Luns, Segni. Jean Monnet, by the way, was agnostic, but came from a catholic family; in the early 1960s, his sister was the only woman attending the Vatican II Council.

their religious creed – with the Pope as Bishop of Rome as their natural spiritual center – and thus rather "normal". They did not need public reassurance from the church as they were united with many of their fellow liberals and socialists in post-War Europe. All of them looked to Europe's fine past and to its set of venerable values that could reinvigorate them with a sense of pride in light of a collective failure of politics and leadership across Europe over more than a generation. It was no coincidence that the founding Treaties of the European Economic Community were signed at the Capitol in Rome, following a service in San Lorenzo Fuori le Mure, where former Italian Foreign Minister Alcide de Gasperi had been buried less than three years earlier.[40] Yet, the European Economic Community was not simply "a catholic project" and the Treaties of Rome did not need to make any reference to religious belief or even to secular cultural norms and values in order to be understood as a new cultural and political beginning for Europe.

In the 1950's, the Founding Fathers knew what Europe needed and they were in consent with the silent majority of their citizens. Interestingly enough, five decades later and after Europe had experienced a substantial process of secularization, the debate leading to the Treaty Establishing a Constitution for Europe included a highly public and emotionally controversial debate about the relevance of religion and the meaning of God for the Constitution which Europe was about to give itself. What was unnecessary during times of much greater religious consent became divisive during times of excessive pluralistic and normative pluralism. In the course of the constitutional debate, the name of God was mentioned in the public media across the European Union more often than in decades. In light of this mixture of positions, the public debate about the inclusion of God in the Treaty Establishing a Constitution for Europe was serious, valuable and reasonably honest. The late Pope John Paul II, other church leaders and committed politicians had continuously claimed that Europe's identity could not be described without clear reference to God and Christian values. Their position gained respect beyond any political text and compromise. But in the end, God was not invoked in the Treaty Establishing a Constitution for Europe. The Reform Treaty came about without any new political debate on the matter of a public role for religion. Secularists, and even more rigid laicists, continued to dominate the arena of European politics.

At the same time while Europe was doubtful about the public relevance of its Christian heritage and the Christian faith of many of its citizens, an increasingly secularized environment had become overly sensitive to the effects of Muslim migration to Europe that had taken place since the 1950's. Rising to the tide of Islam in Europe, many proponents of a post-Christian Europe were also willing to also give up the Christian roots of the continent. In the meantime, Islam has become the second largest religion in Europe and requires a new calibration of religious relations on the continent.

40 For a good essayistic description of the scenery, see Knipping, Franz, *Rom 25. März 1957, Die Einigung Europas*, Munich: Deutscher Taschenbuch Verlag, 2004: 9-18.

However, the main problem for the European Union in defining its roots and moral ressources has been the overly defensive and sometimes rapidly vanishing religiosity across Christian Europe. This phenomenon is exceptional indeed, especially when compared to the religiosity across all other continents in the early twenty-first century.[41]

Not only overly pious observers were astonished about the "precipitously declining religiosity" in Europe.[42] A Gallup millennium survey of religious attitudes in 1999 and related surveys had brought awareness to the fact that for 49 percent of Danes, 55 percent of Swedes and even 65 percent of Czechs God did not matter, while 82 percent of Americans stressed that God is "very important" in their lives. 48 percent of West Europeans hardly ever go to church, for Eastern Europe the figure was a little lower than 44 percent.[43] Eurobarometer surveys emphasize the continuous importance of religiosity in the life of all European people. In reality, however, the gap between theory and practice could hardly be bigger. Their own uncertainty about the public sphere of religion makes many Europeans react almost helplessly in the face of the firm belief of others with a distinct creed, Muslims in particular.

Sometimes, relativism has gone so far that Christian believers face outright resentment, pressure or cynicism in contemporary Europe, as an Italian candidate for the office of an EU Commissioner had to experience: In the autumn of 2004, Rocco Buttiglione's traditional (and thus not spectacular) Catholic convictions on morality, family and sexuality were held against him as if he represented the darkest ages of Europe. Buttiglione had to withdraw his candidacy and was forced to conform to the strange exceptionalism of Europe as far as the public role of religion is concerned. Buttiglione's faith prevented him from being acceptable for public office – a unique case of religious persecution in post-totalitarian Europe and astonishing for a continent being so proud of its protection of human rights, the right to religion included.

The role of religion in European public life has substantially changed in the half century since 1957. In the 1950's, Western Europe experienced a revival of Christian values in the aftermath of totalitarianism and the destructions of a Thirty Years War. At the same time, in Eastern Europe under communist rule, coupled with state-induced atheism, the public discourse became increasingly cynical toward religious and civic values in public institutions. In the 1990's and during the first decade of the twenty-first century, the picture seemed to change: While Western Europe has become widely secular and somewhat relativistic about religious and ethical norms, post-communist countries are struggling to again be "living in truth."[44] But they remain skeptical about the relationship between public institutions and value preferences. The transformation

41 See Weiler, Joseph H. H., *Ein christliches Europa*, Salzburg: Pustet, 2004.
42 Ferguson, Niall, *Colossus: The Price of America's Empire*, New York: Penguin Press, 2004: 236.
43 Ibid.: 237.
44 Havel, Václav, *Living in truth*, London: Faber, 1989.

of the political culture in the EU candidate states has not been an easy process. It has not come to an end with the formal accession to the European Union.[45]

As delicate as the public role of religion is the issue of cultural diversity for the shaping of Europe's identity and the implications it has on European political integration. In Western Europe, by and large, cultural diversity is no longer considered an obstacle to political cooperation and integration, although the notion of political solidarity – reflecting the idea of a common destiny –only gradually takes shape. Differences in identity are no longer a matter of mutually exclusive principles but have rather become a matter of different mentalities.[46] The Basque country is an exception to the rule: There, the discourse on cultural identity remains closer to the perception of identity in most of post-communist Europe. In most of Central and South Eastern Europe cultural differences remain essential for the definition of identity, dignity and pride. After the experiences with the Austro-Hungarian, the Turkish or the Russian and the Soviet Empire, most of post-communist Europe still links cultural identity and cultural recognition predominantly with genuine nationhood. National identities tend to be considered mutually exclusive.[47] Given these differences in attitude and perception, it cannot be an easy task to shape a common European identity and common European political interests.

In light of this situation, the result of the constitution-building decade can be perceived like a glass of water: for some, it may be half full, for others it may be half empty. For Europhiles, the work of the Constitutional Convention was historic, and they were failed by the national governments, which did not succeed in ensuring the ratification of the European Constitution. For Euroskeptics (and probably also for most Euro-realists) the rejection of the European Constitution and the Treaty of Lisbon in public referenda was the logical consequence of a wrong and naive turn in European integration. In any case, the debate about constitution-building in the European Union has been substantially advanced during the first decade of the twenty-first century. European constitutionalism has never been more substantiated.[48] As for the political outcome, it was remarkable enough that 27 European states recognized one common text as basis for their future deliberations and decision-making in the EU. They

45 See Brzezinski, Mark, *The Struggle for Constitutionalism in Poland*, Basingstoke: Macmillan, 2000; Goenenc, Levent, *Prospects for Constitutionalism in Post-Communist Countries*, The Hague: Nijhoff, 2002; Erdödy, Gabor (ed.), *Transformationserfahrungen: Zur Entwicklung der politischen Kultur in den EU-Kandidatenländern*, Baden-Baden, Nomos: 2003.

46 For an assessment of mentality conditions in North Western Europe see Delwaide, Jacobus, et al. (eds.), *Die Rheingesellschaft: Mentalitäten, Kulturen und Traditionen im Herzen Europas*, Baden-Baden: Nomos, 2003.

47 See Baier-Allen, Susanne, and Ljubomir Cucic (eds.), *The Challenges of Pluriculturality*, Baden-Baden: Nomos, 2000; Erdödy, Gabor (ed.), *Mitteleuropa: Politische Kultur und europäische Einigung*, Baden-Baden: Nomos, 2003.

48 See Brand, Michiel, *Affirming and Refining "European Constitutionalism": Towards the Establishment of the First Constitution for the European Union*, Florence: European University Institute, 2004.

succeeded in the formulation of a text but failed (in its interpretation) to convey it to the citizens. However, the double ratification crisis has helped to broaden the constitutional debate more than the political leaders of all EU member states could have dreamt of in 2001.

In 1991, the Treaty of Maastricht had established Union citizenship, without gaining strong public recognition among the European citizenry. Would the original Treaty Establishing a Constitution for Europe have been ratified without the controversy that included its formal failure, Europe would have probably missed the change of a deepened reflection and debate about its constitution, identity and future path. Paradoxical as it may seem, through the ratification crisis the Second Founding of European integration gained meaning and direction.

During five decades of European integration, European institutions have been established. They are strong and reasonably effective. The European Union has been established as a political system managed by multilevel governance.[49] But Europeans are still a rare species in the European Union. To facilitate the development of genuine Europeans must be the guiding principle of the new era of European integration. The formal introduction of a Union citizenship has provided for legal framework. To fill it with life and to make Union citizenship work will require many practical efforts. The Second Founding of European integration will remain a long-term project.

Claiming to define Europe's identity as political and yet recognizing the national or even regional cultural diversity as another level of identity requires philosophical clarity. Inter alia, it raises the issue of reciprocity, based on the recognition of mutually agreed differences, yet anchored in the explicit will and consent to share common interests, goals and destiny. Political solidarity can only grow in the new era of its development if the European Union initiates deeper integration through the resolution of pending issues instead of getting trapped again in idiosyncratic institutional designs that eventually may be more harmful to its legitimacy than even Euro-skeptics want it to be.

4. Cutting Through History: Periodizing European Integration

Since its beginnings in 1957, the European integration process has been enormously successful. However, by looking at the evolution of European integration in more detail, one can distinguish periods that advanced the process better than others. American historian Arthur M. Schlesinger Jr. has discussed cycles of history and rhythms of social and political development related to changing generations. It is certainly wrong to believe in cyclical political developments as if going from A to B would ultimately lead

49 See Scharpf, Fritz W., *Community and Autonomy Multilevel Policy-Making in the European Union*, Florence: European University Institute, 1994; Höreth, Marcus, *The Trilemma of Legitimacy: Multilevel Governance in the European Union and the Problem of Democracy*, ZEI Discussion Paper C11, Bonn: Center for European Integration Studies, 1998.

back to A. But it is worth considering the impact of generational changes on political developments. Referring to the sociological work of Karl Mannheim and José Ortega y Gasset, Schlesinger conceived the "model of a thirty-year alternation between public purpose and private interest"[50] as the key to understanding the impact of generational effects on political majorities. As he proposed, "each generation spends its first fifteen years after coming of political age in challenging the generation already entrenched in power. Then the new generation comes to power itself for another fifteen years, after which its policies pale and the generation coming up behind them claims the succession."[51] Schlesinger does not help us to understand why the changes occur and in which direction they may lead. Yet, it is sensible to identify distinct periods in the history of European integration and to consider defining experiences of each leadership generation and the marks that each has left on European integration.

1957 to 1979: The first period of European integration brought about the European Commission, the Court of Justice and the directly elected European Parliament as the first supranational institutions of European integration, while it focused on the completion of the customs union and ended with the first round of enlargement (to include Ireland, Denmark and the United Kingdom). This period also saw the failure of speedy political and military integration in Western Europe.

1979 to 1993: The second period of European integration led to the completion of the Single Market, two more rounds of enlargement (to include Greece and to Spain and Portugal) and the beginning of political cooperation on matters of foreign policy, based on the refounding of the European Community as European Union with the Treaty of Maastricht.

1993 to 2009: The third period of European integration was defined by the steady constitutionalization and politicization of European integration through treaty revisions, the introduction of the common currency and of Union citizenship, the fourth and fifth EU enlargement (first to include Austria, Finland and Sweden, and then to include Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Malta, Cyprus, Romania and Bulgaria), the first military operations under the umbrella of a common foreign and security policy and the rise of people's power over elite-driven institutional arrangements.

It would be speculative to anticipate the outcome of the fourth period of European integration that will most likely last from 2009 until around 2025/2030. However, fifty years after the path to integration began, the most daunting challenges ahead of the EU seem obvious: Efforts to raise the degree of common European interests and to deepen integration amidst skepticism and fear; introduction of the principle of solidarity to the sphere of the welfare state; a stronger international political and military profile of the European Union; the issue of "the other" if not "the enemy," including the management

50 Schlesinger jr., Arthur M., *The Cycles of American History*, Boston: Houghton Mifflin, 1986: 31.
51 Ibid.: 30.

of migration to Europe; the need to increase economic dynamics in an aging European society; the relationship between cultural pluralism and universal moral claims; and further rounds of enlargement amidst the difficult process to strenghten and to improve the institutional arrangements on which the EU is based. Without doubt, a convincing application of coherent internal governance and of stronger contributions to global order-building will challenge the EU in the years and decades ahead.

These challenges will have to be handled by a generation of leaders yet unknown. Most evident is the following: The youngest voters in the election to the European Parliament in 2009 were born in 1991. They cannot personally remember the fall of the Berlin Wall. The youngest voters in the elections to the European Parliament in 2024 were born in 2006. They will not even remember the ratification crisis of the Treaty Establishing a Constitution for Europe once they may go voting for the first time. The crisis over a European Constitution, the introduction of the euro, the terror attacks of 9/11 and 3/11 and the unification of Europe will be known to them only through the prism of their parents' and teachers' experiences. The cycle of experience of older generations, including their attitudes toward European integration, is not less revealing: Children born in 1945 were about to turn 65 shortly after the provisions of the Reform Treaty were to come to fruition. The Founding Fathers of the European Economic Community had been born before the beginning of the twentieth century. They did not live to see 1989 and the end of the Cold War. Children born in 1989, in turn, can expect to live until about 2070. In 2057, most of these children will celebrate the 100th anniversary of the European Union. The implication of generational aspects for the rhythm of ideas on Europe deserves further academic studies.

It is the generation born around 1957 that will now have to advance the idea of constitutional patriotism in Europe and the quest for a stronger global role of the EU, while the generation born around 1989 will take over power and responsibility before the work of the children of 1957 will be completed. Their formative experiences with European integration will matter as much as any economic model about path dependencies of European integration. The generation born in the late twentieth century will provide the leaders of tomorrow and the day after tomorrow. The leaders of the two generations of "1957" and of "1989" will direct and shape the European Union during the first half of the twenty-first century. Their work will have effects even beyond 2057. Political controversies and generational rifts are inevitable as they have ever been.

Ahead of the European Union and emerging generations of European leaders is a new set of priorities. Most of all, they have to develop a sense of orientation for guiding the European Union into a new and increasingly uncertain world. They have to define the opportunities of globalization for Europe and the benefits of European integration for the individual Union citizen. During the five past decades, Europe has tried to escape its past. In the decades ahead Europe will have to discover its common future.

Increasingly, culture and identity will be debated in a political and constitutional context.

The Second Founding of the European Union will be shaped and interpreted by the pragmatic results of integration in the decades ahead. With the change of generations and priorities, circumstances develop and challenges evolve. The main criteria for the continuous success of the European Union will be the degree of its ability to transform the notion of solidarity from a rhetorical principle into a viable and sustainable political reality – both inside the European Union and in Europe's encounters with partners all over the world.

The process of politicizing the identity of Europe is related to the meaning of memory for the citizens of the European Union. For over two millennia, European culture has evolved and different structures of society and statehood have emerged. Europeans discovered the world and Europeans conquered others – up to the point of generating a culture of guilt over the history of European expansionism. Europeans used to quarrel with each other, up until the complete self-destruction during the Thirty Years War that encompassed the first half of the twentieth century (1914-1945). They fought proxy wars in and over their colonies, up until the point that they began to return to seemingly remote places as peacekeepers and democracy-builders. They erected the magnificent structures, both material and immaterial, that are the visualizations of a common European heritage, from church spires to market squares, from the arts to music, from linguistic diversity to habits of lifestyle. They have defined time (through clocks and the calendar that is more or less universally approved today) and space (by delineating the borders of continents and of countries beyond Europe's borders). Europeans have exported more ideas and goods than any other region or culture, but they are still in the process of learning that others were and are as cultured as Europeans see themselves to be.

Europeans reconciled among themselves, beginning in the second half of the twentieth century and stretching into the first decades of the twenty-first century. Yet often, they did not understand the critique that they are erecting "fortress Europe" at the expense of others in matters of trade protection, agricultural subsidies and migration. In spite of this critique, most Europeans consider themselves generous, supportive of sustainable development and the eradication of poverty, and sympathetic to multilateralism and global cooperation.[52] Yet their image in the world has been, and remains so in some places, tainted with the history of colonialism, genocide and ethnic cleansing. None of this was exceptionally European, but all of it was exceptional for the development of a profoundly ambivalent, torn and contradictory set of European

52 See Tempini, Nadia, *Fortress Europe?: EC External Trade Relations and New Protectionism*, London: PNL Press, 1989; Baneth, Jean, *"Fortress Europe" and other Myths about Trade*, Washington D.C.: World Bank, 1993; Geddes, Andrew, *Immigration and European Integration: Towards Fortress Europe?*, Manchester: Manchester University Press, 2000; King, Russell, et al. (eds.), *Eldorado or Fortress?: Migration in Southern Europe*, Houndmills: Macmillan, 2000.

memories. It would not be historical to disregard these memories when reflecting on the identity of Europe.

The first set of formative memories for the evolution of a political identity of European integration is negative. It includes the memories of European wars, of nationalism and racism, of the Holocaust and the Gulag, of totalitarian politics under Nazi and communist rule. Over time, these darkest experiences in European history have blended into a new forward-looking denominator, at least within the European Union: "Never again." It was not easy to reach this stage and to root it into an atmosphere of mutual trust. It was not simple to generate sufficient readiness in Europe to share interests and even destiny with those who were enemies only a short while ago. As far as the memory of suffering is concerned, a short while can become a long haul. Yet, the European Union has achieved reconciliation, although the scars of the past still exist with varying degrees of intensity.

The second shared experience of Europeans in the second half of the twentieth century was a positive one. European integration has worked: as an order of peace and of freedom, as the fountain of unprecedented affluence, and as the source of respect all over the world. Before 1989, this experience could only be felt among the privileged Western Europeans.[53] With the peaceful revolutions of 1989, this experience began to spread to Central and Eastern Europe with the process of democratic transformation and gradual economic rehabilitation. The shared experience of freedom and market economy, of the benefits of cooperation and integration, and of pooled resources and sovereignties did not grow without ambiguities and skepticism. Rather, these grew and can be identified as the second cornerstone for a culture of memory preceding the growth of a political identity of European integration.[54]

The third shared experience is related to Europe's role in the world and the international perception of Europe. It often comes as a surprise to Europeans to realize how much they have in common with each other when they reflect on this issue outside Europe or in the presence of non-Europeans. In the early twenty-first century, in the presence of non-European circumstances or people, most Europeans, regardless of their national or social, regional or political background, see their "European-ness" as something non-antagonistic, non-imposing and non-partisan. And it is interesting to note that the European experience with transition to democracy, with conflict resolution and peace building has attracted enormous attention all over the globe.

53 See Bracher, Karl Dietrich, *The Age of Ideologies: A History of Political Thought in the Twentieth Century*, London: Palgrave Macmillan, 1984: 189-202 ("Post-War Experience: Re-Evaluation and Reconstruction").

54 See Garton Ash, Timothy, *History of the Present: Sketches and Dispatches from Europe in the 1990s*, London: Allen Lane, 1999: ix-xxi; Vinen, Richard, *A History in Fragments: Europe in the Twentieth Century*, London: Abacus, 2000: 265-474 ("Part III: Post-War Europe").

It remains central for the success and legitimacy of European integration to increase the common purpose about its objectives among EU citizens. In the course of the twentieth century, Europe had turned from being a subject, if not the leading subject of world events into the object of resentment, into a continent destroyed, divided and dependent upon external powers beyond Europe's shores. Since the end of the Cold War, its internal division and as a consequence of the success of European integration, Europe has once again become a leader in world order-building. The European Union is respected for its experiences of conflict resolution and modes of consensual politics, its affluence and its experiences with democratic transition and the primacy of law. This worldwide respect does not necessarily translate into domestic recognition and pride. The European Union needs to constantly reinvigorate its purpose in order to gain recognition and respect among its own citizens. A constant renewal of the contract between the political leaders and the citizens of the European Union is necessary to maintain a sufficient degree of loyalty to European integration and legitimacy of integration practices.

After the original founding of European integration, the freedom of travel and the emergence of a common market have been the most fascinating and inspiring experiences for many citizens. Any perusal of travel guides published before the outbreak of World War I shows how open Europe once was. Borders and minds were closed as a consequence of escalating nationalism. World War II was the climax of this self-destruction of the openness of Europe. The gradual return to open borders after 1957 was the most lauded improvement for the generations that had suffered the impact of nationalism and warfare. The shared experience of open EU borders is no longer an emotional driving force for younger Europeans. Neither is the visibility of the European flag in public buildings or the operation of European institutions. The strongest equivalent to the opening of borders for post-1957 Europeans was the physical introduction of the euro in 2002. This was not only the symbolic and logical outcome of the Single Market. The introduction of the euro for more than 300 million European citizens in twelve EU member states showed that European integration was impacting everybody's daily life. Critical assessments of the European Union's failure to couple the euro with a common political structure were expressed less loudly than complaints about price increases.[55] Yet, all in all, the euro was introduced smoothly, even in countries where the exchange rate to the old national currency was not at all easy. The Greeks had to give up the drachma, notably the oldest currency in Europe. The Germans had to relinquish the Deutschmark, the symbol of a successful and widely appreciated

55 Dyson, Kenneth (ed.), *European States and the EURO: Europeanization, Variation, and Convergence*, New York: Oxford University Press, 2002; Martinot, Bertrand, *L'Euro: une monnaie sans politique?*, Paris: Hamattan, 2003.

recovery after the dark years of Nazi rule. For others, pride in the national currency was weaker. In 2007, Slovenia was the first post-communist country to introduce the euro, followed in 2008 by Malta and Cyprus, and in 2009 by fellow post-communist Slovakia.

In the early twenty-first century, the introduction of the euro was the single most important demonstration that European integration is not only about "building Europe" at its top. Increasingly, European integration affects national traditions and structures: European integration is "striking back." While adding a new dimension to the structures of public life in Europe, European integration affects the daily life not only of politicians and bureaucrats, business leaders and academicians, but also each and every Union citizen. More than legal provisions of Union citizenship and probably more than political awareness about the relevance of decision-making in EU institutions, the euro has made Union citizens feel that European integration is a "real thing." But under these conditions, European integration has also encountered new skepticism and outright rejection among those of its citizens who believe that these processes happen too fast and reach too far.

The euro has become a successful currency. Yet, the experience with European integration shows that great visions tend to become meaningless once they are realized and consummated. This was the case with the vision of open borders. It was the case with the vision of a united Europe. And it is the case with the vision of a common European currency. The European Union needs to constantly define new visions, purposes and ideas in order to remain attractive for its citizens and regain the support and loyalty of new generations. At the core of this task lies the need to give the idea of Union citizenship a constant and emotional meaning. If EU citizens cannot identify with the European Union as being "owned" by them, they will at best remain passive consumers of EU gratifications. For a body politic to be actively supported by its citizens, it requires to constantly reinvigorate purpose and meaning. Only success nurtures loyalty and only loyalty nurtures political legitimacy. Ernest Renan's classical definition of politics as a "plébiscite de tous les jours"[56] is also relevant for the European Union.

Sovereignty has been defined as the supreme command of one's fiscal and economic destiny, of one's social safety and of one's external security.[57] Money, police and the military have always been considered the core expressions of a state's sovereignty. The process of European integration has transferred this experience to the European level without aiming to create a genuine "European state". Europeans have learned to live with the fact that the transfer of monetary sovereignty to the EU-level did not

56 Renan, Ernest, *Qu'est ce-qu' une nation?*, (in English: *What is a Nation?*), Toronto: Tapir Press, 1996.

57 See Guehenno, Jean-Marie, *The Typology of Sovereignty*, Washington D.C.: US Institute for Peace, 2000; Sim, Stuart, *The Discourse of Sovereignty - Hobbes to Fielding: The State of Nature and the Nature of the State*, Aldershot: Ashgate, 2003.

undermine their sense of national or even regional cultural identity. They pay with euros yet remain Greeks, Germans or Irish. They have begun to distinguish political sovereignty from cultural identity. In fact, they realized the value added by preserving cultural identity while transferring political sovereignty at the same time.

At the same time, they have begun to discover the link between pooled sovereignty and shared political identity. Since identity is relative and contingent, they can realize that multilayered and multiple identities are logically not exclusive. The effect of the introduction of the euro proved the opposite: As much as European integration is about pooling of sovereignties, its effects generate multilayered or multiple identities.[58]

While politically and legally integration is about the pooling of sovereignties, culturally it is about the broadening and sharing of identities. These arguments suggest that integration is "good" in itself and that it adds value through positive experiences and rationale arguments. Fact of the matter, however, is that the permanent inclination of any political or social system is to define itself against others. Since the days of ancient Greece, Europe has been struggling with the inclination to define itself against "the other." Defining "the good" in itself has always been the more difficult and often less successful task.

Also in the contemporary European Union, the issue of "the other" remains unresolved for many Europeans. European culture and intellectual history has always been torn between the understanding of Herodotus, that Greek identity was contrasted with the Persians as "the other," (representing barbarism) and the claim of Aristotle, the philosopher of same Greek roots, who stated that nothing is more difficult than defining "the good" out of itself without the need for "the other" or even for an enemy.[59] In the early twenty-first century, the European Union officially gave an indisputable answer: It wanted to be partners with a world of equals, promoting dialogue, understanding and cooperation. For many EU citizens, the case is less simple: Some of them are vocal in expressing their opposition to "American conditions" in Europe, whatever that might mean. School crime has entered Europe. Drugs, broken families and problems with migrants in the socially neglected parts of inner cities are no American prerogative. The extremely good quality of universities, including research universities, in the US encourages a majority of European Ph.D. students to stay in the US upon finishing their studies there. The Anglo-Saxon economic model is often quoted but seldom properly defined. Social and economic models in Europe are too manifold to reduce them to one European model that ought to be protected in the age of globalization. The emotional debates among Americans and Europeans in 2002/2003 over the war in Iraq and the role

58 See Dunkerley, David, et al. (eds.), *Changing Europe: Identities, Nations and Citizens*, London/New York: Routledge, 2002.

59 See Khan, H. A. (ed.), *The Birth of the European Identity: The Euro-Asia Contrast in Greek Thought 490-322 B.C.*, Nottingham: University of Nottingham, 1994.

of multilateralism in world politics came close to an internal Cold War of the West.[60] Anti-European sentiments in the US were echoed by strong anti-Americanism in Europe. This was often coupled with a changing attitude of many Europeans toward Israel. To the horrified surprise of many in Israel and elsewhere, more than 59 percent of Europeans consider Israel as the biggest threat to world peace in the twenty-first century.[61] America's strong support for Israel strengthened the dangerous trend of a transatlantic cultural divide.

This did not mean that the Arab world or Islam are the new attractions for Europe. On the contrary, many Europeans tend to be afraid of the weakness of Arab countries and the radicalism or even extremism associated with a certain version of political Islam. Often, the answers given in Europe remain ambiguous and unfocused. They also reflect uncertainty in dealing with the undeniable fact that Islam has become Europe's second largest religion next to Christianity. It is indicative that different EU countries give different answers to the question of Islamic veils in public schools.[62]

Others in Europe are afraid of the success of China and its rise to a new world power. Russia entails a certain attraction for some in Europe, but worries many because of its creeping return to authoritarianism and the threat of using Europe's dependency on energy supply as a political weapon.[63] It was indicative for the uncertain attitudes of Europe vis-à-vis "the other" that the relationship toward the geographical neighbors of the EU became an explicit issue in the deliberation of the Treaty Establishing a Constitution for Europe. Never before in the world did a Constitution explicitly include a chapter on neighborhood. This was a clear sign of how uncertain Europe is about the role of its "others."

Europe's relationship with the outside world, its perception of Europe and Europe's perception of the relevance of the world for Europe in the age of globalization are less clear than the official diplomatic rhetoric of the European Union suggests. It is beyond doubt that Europe, with its strongly export-oriented economy and dependency on the import of energy from the Middle East and from Russia, its links through migrant workers and emigrant communities to the Arab world, and its strategic investments with the United States could not afford to become myopic and exclusionary. Yet, Europe has often done so, or at least has been perceived as doing so. Struggling with the meaning of

60 See Gordon, Phillip H., and Jeremy Shapiro, *Allies at War: America, Europe and the Crisis over Iraq*, New York: MacGraw-Hill, 2004; Kühnhardt, Ludger, "German-American Relations: What Else Can Go Wrong?," in: American Institute for Contemporary German Studies (AICGS) (ed.), *Power and Principle - Prospects for Transatlantic Cooperation*, German-American Issues 02, Washington D.C.: 2004: 23-36.

61 See European Union, European Commission, *Flash Eurobarometer: Iraq and Peace in the World*, November 2003, http://ec.europa.eu/public_opinion/flash/fl151_iraq_full_report.pdf.

62 On the larger issue see Al Sayyad, Nezar, and Manuel Castells (eds.), *Muslim Europe or Euro-Islam: Politics, Culture and Citizenship in the Age of Globalization*, Lanham: Lexington Books, 2002.

63 See Neumann, Iver B., *Uses of the Other: "The East" in European Identity Formation*, Manchester: Manchester University Press, 1999.

"the others" is an echo of the ongoing quest for finding a renewed purpose for European integration.

The biggest challenge for the development of a culture of communication in a Europeanized public sphere is linked to Europe's demographic make-up and its long-term consequences. This complex issue is connected to the future of the (national) welfare state and to the search for European answers to globalization. The European welfare state is the twin sibling of the European nation state. While the latter has been undergoing substantial, albeit incomplete transformations since its nationalist overstretch, the welfare state has been only gradually forced to adjust to new realities. Whether Reaganomics in Margaret Thatcher's Great Britain, shock therapies in post-communist countries or resistance to reform in France, Germany or Belgium: Throughout the last quarter of the twentieth century, the transformation of the European welfare state remained bound to the decision-making prerogatives of the European nation state. While the European Union called upon its member states to embark on a path that will guarantee Europe's economic primacy in the year 2010, its constituent member states struggle with aging populations, fiscal problems, overly expensive health and pension systems and the fear both from Islamic migration and more children of their own. As a consequence, national political systems of the European Union were absorbed with the "old" agenda of readjusting social systems and reactions fearful to globalization while EU institutions were trying (often in vain) to define the "new" agenda of Europe's joint response to globalization and its opportunities. It remained unclear what the long-term implications of this ambivalence would be.

The conflict between old answers in aging welfare state societies and the need for innovation, creativity and a new sense of future to position Europe properly in the age of globalization will occupy institutions and policy-makers of the European Union for many years to come. Enormously increased regional asymmetries as the consequence of Eastern enlargement add to the social pressure. Coping with issues of equality and social solidarity and expressing skepticism against presumably Anglo-Saxon models of global capitalism will remain a strong topic in Europe. Moreover, the future role of the nation state and its government necessitate redefinition – a task easier said than done. The future of European governance has to be streamlined in order to foster the ambitious plans for the economic and technological future of the EU, which is as difficult to do. In terms of the quest for a European political identity, it means no less than confronting the most difficult task possible: In order to secure the identity and diversity that Europe is so proud of the European Union has to constantly reinvent itself by overcoming some of its dearest social traditions. This includes adjustments of the European Social Model, which is more often cited than properly defined.

For the time being, Europe is more populous than the US. This might not last for long. Between 1980 and 2003, the population of integrated Europe (EU 15) has grown

by 6.1 percent, while the US population has grown by 27.8 percent.[64] By 2050, the EU population is supposed to shrink from 487 to 456 million (a decrease by 6 percent), while the US will grow from 282 million people in 2000 to 420 million in 2050. Estimates assume a median age for 2050 of 52.7 years in the EU, but only of 36.2 in the US. This will have enormous consequences for the welfare state, for pension and health systems in particular. Due to this aging population and its economic and welfare implications, the underlying economic growth in the EU could be reduced from 2 to 1.25 percent.[65] At the same time, developing countries are becoming an increasing demographic, social and migratory challenge for Europe: Their populations are young, growing, and often socially marginalized with all the known problems, including human trafficking and even terrorism. In 2050, the average Yemenite will be 32 years younger than the average European and 34 years younger than the average Japanese. At the same time, life expectancy will have grown enormously. The population of Yemen grew from 4.3 million in 1950 to 18.3 million in 2000. It could grow to 158.6 million by 2050. The German population, in contrast, might decrease from 82 million in 2000 to 51 million by 2050.[66] Whether or not this will eventually happen, more important is the growing age gap. While Europeans will be inclined to protect their welfare systems, people from other parts of the world will claim their share in Europe's affluence that is diminishing due to decreasing population and decreasing productivity. By 2020 the labor pool in the Arab world will have increased by 146 million, in sub-Saharan Africa by 402 million. On the other hand, the German age cohort born between 1995 and 1999 is 47 percent smaller than the group born between 1970 and 1974. By 2020, the European Union will experience a 20 percent decrease in its age group between 20 and 25. An American expert on demography, Paul S. Hewitt, foresees "age recessions" in Europe as a consequence of the unbalancing of Europe's demography.[67] It is no consolation for Europe that his view might express vested American interests?

By supporting development in other parts of the world and by limiting its own population, which often was considered wise in light of the limits of growth and the limits of global resources, Europe is creating the very problems it will be challenged with in the course of the twenty-first century. Europe's response to Europe's past is generating challenges that can endanger and undermine the success of those original responses. This paradoxical conclusion confirms yet another insight of Arnold Toynbee regarding the nexus between challenge and response.

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64 See Wirtschaftskammern Österreich, *Bevölkerungsentwicklung*, http://wko.at/statistik/eu/europa-bevoelkerungsentwicklung.pdf.

65 Grant, Charles, *Transatlantic Rifts: How to Bring the Two Sides Together*, London: Centre for European Reform, 2003: 27.

66 See Hewitt, Paul S., "Die Geopolitik der globalen Alterungsprozesse," *Frankfurter Allgemeine Zeitung*, March 23, (2004): 39.

67 Hewitt, Paul S., "Depopulation and the Aging in Europe and Japan: The Hazardous Transition to a Labor Shortage Economy," *International Politics and Society*, 1 (2002), http://www.fes.de/ipg/ipg1_2002/ARTHEWITT.htm.

Related to this phenomenon is Europe's handling of the migration issue. Europeans tend to favor migration if it helps them to enhance their economic productivity in the absence of domestic fertility. Yet, they are worried, if not scared, about its consequences. This is related to the fundamental difference in migration effects in Europe and in the US. While in the US, the absorption capacity of its political culture has proven wrong all the fears that say that the US could lose its binding glue because of non-Caucasian migration, Europe was not properly equipped to integrate either more Muslim migration from its southern borders or more Russian or other post-Soviet migration from its eastern borders. Neither of the two groups connects with "a European dream" or a civil religion of Europe that could generate pride and a sense of belonging among immigrants. Quite the opposite, many immigrant communities in Europe remain marginalized and are considered a burden rather than a contribution, no matter what politicians suggest in tolerance speeches and beyond the certainly worrisome threat of Islamic totalitarianism. In 2003, for the first time Spain became the largest recipient country for migrants into the EU with 594,000 out of 1.6 million per year. Twice as many migrants went to Spain as France and Germany combined. This trend has continued ever since. Europe is a continent of migration, but the European Union still has to produce a breakthrough in terms of a consistent, forward-looking migration policy coupled with a future-oriented, child-friendly atmosphere. To generate such results would contribute more to the evolution of the European public sphere than many abstract academic discourses on the matter, most of which are stereotypically skeptical or simply focus on the issue of creating a more Europeanized media landscape in the EU.

In the early twenty-first century, while the EU embarks on the course toward constitutional patriotism and a more profiled global role, Europe's most serious challenge remains the reconciliation of diverse national cultural identities, and mentalities, including political habits, with a common political identity and the reconciliation of shared universal values with its distinct and often parochial habits of localism.[68] The perspective has to be living in reconciled difference. The most important legitimacy test for the European Union during the next decades will be whether or not it contributes to this reconciliation of differences while at the same time generating strength through shared interests and a future-oriented common perspective.

What should bother the EU is not the provocative question whether or not an artificial "point of no return" has been achieved in the integration process. What should

68 See Tiersky, Ronald (ed.), *Europe Today: National Politics, European Integration and European Security*, Lanham: Rowman&Littlefield, 1999; Cederman, Lars-Erik, *Nationalism and Bounded integration: What it Would Take to Construct a European Demos*, Fiesole: European University Institute, 2000; Malmborg, Mikael af, and Bo Strath (eds.), *The Meaning of Europe: Variety and Contention Within and Among Nations*, Oxford/New York: Berg, 2002; Gubbins, Paul, and Mike Holt (eds.), *Beyond Boundaries: Language and Identity in Contemporary Europe*, Clevedon: Multilingual Matters, 2002; Harmsen, Robert, and Menno Spiering (eds.), *Euroscepticism: Party Politics, National Identity and European Integration*, Amsterdam: Rodopi, 2004.

worry the European Union more is the perspective of a creeping deterioration of the base of its affluence and its capacity for influencing the path of global developments in the twenty-first century. The world might well live with a weak Europe, but Europe might not be happy to live with the consequences of a weakened role in the world.

As a result, Europe must pro-actively pursue the path toward a reconciled identity and shared destiny. It will have to challenge the myth of the missing demos as the root cause for its inability to generate a sufficiently solid public sphere. Europe will have to resort continuously to a pragmatism that argues in favor of issues and challenges of a future-oriented nature as first priority instead of becoming trapped by ghosts of past divisions. In the early twenty-first century, these ghosts still exist and could easily be more forcefully revived. It is thus all the more a question of responsible political leadership to guide the European body politic during the next periods of its development. Such guidance could help propel further transformations of European identity and the relationship between culture and politics. These transformations would not be the result of theories of integration but rather of responses to concrete challenges. This thought at least illustrates a reassuring realism.

The factors that bind united Europe are not different from whatever Europeans used to know about the glue of their nation states: shared memories, common suffering, and mutual success. Nothing less and nothing more is expected from the European Union during the period of its Second Founding. An initial sense of common purpose has clearly developed over the first fifty years of European integration, combined with a commonly shared memory and a growing evolution of a community of communication.[69] But now, first and foremost, Europe needs to redefine its purpose and live up to its new rationale. Through concrete and sustainable actions the EU must demonstrate that it represents "a Europe that works." It has been argued that Europe is building a new form of Commonwealth.[70] Whether Europe will live up to its global responsibilities and to the challenge of globalization is one, if not the most important, test case for its future path. To continuously generate a sufficient amount of internal legitimacy is the other testing ground for the future of Europe's Commonwealth.

Europe has embarked on the journey of its Second Founding on the basis of its genuine and often idiosyncratic political and legal contractualism. The concept of the contract as a basis for social and political consent has been known in political philosophy since the evolution of statehood in Europe. It once provided an authoritarian answer to European civil wars. With a cumulative European Constitution, consisting of a series of European treaties, democratic contract theory has entered the world of European integration. It will be tested time and again by political events to which the EU citizens expect the European Union institutions to give adequate answers.

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69 For a critical assessment of this interpretation see Kielmannsegg, Peter Graf, "Integration und Demokratie," in: Jachtenfuchs, Markus, and Beate Kohler-Koch (eds.), *Europäische Integration*, Opladen: Westdeutscher Verlag, 1996: 47-71.

70 See Brague, Remi, and Peter Koslowski, *Vaterland Europa*, op.cit.: 64-70.

1. The Initial Leadership Proposition: A Constitution for Europe

Between 2005 and 2007, the first ever European Constitution (formally called Treaty Establishing a Constitution for Europe or, less formal, Constitutional Treaty) had been buried in order to be resurrected through the traditional channel of ordinary treaty-revision. The democratic aspiration of the European Constitution was curtailed when the repair work was handed back to the experience and camaraderie of intergovernmental backdoor bargaining. Two steps forward with the signing of the Constitutional Treaty in 2004, three steps backward with its rejection in referenda in France and in the Netherlands 2005, two steps forward again with the help of the Reform Treaty signed in Lisbon in 2007 and again three steps backward with its rejection in a referendum in Ireland in 2008 – thus was the path of the roller coaster in the European constitution-building process during the first decade of the twenty-first century. For the time being, the EU would continue to operate on the basis of the widely despised Treaty of Nice of 2000.

Despite the final result of this process: On October 29, 2004, European Constitutional history was rewritten. For the first time in the history of the European continent, a "European Constitution" was signed by the representatives of 28 countries.[1]

1 The Treaty Establishing a Constitution for Europe was signed by Austria: Chancellor Dr. Wolfgang Schüssel, Christian Democratic Austrian People's Party (ÖVP), Federal Minister for International and European Affairs Dr.Ursula Plassnik, Christian Democratic Austrian People's Party (ÖVP); Belgium: Prime Minister Guy Verhofstadt, Flemish Liberals and Democrats (VLM), Foreign Minister Karel de Gucht, Reformist Movement (MR); Cyprus: (Greek Republic): President Tassos Papadopoulos, Democratic Party (DIKO), Foreign Minister George Iacovou, Independent; Czech Republic: Prime Minister Stanislav Gross, Social Democrats (CSSD), Foreign Minister Cyril Svoboda, Christian-Democratic Union – Czech People's Party (KDU-CSL); Denmark: Prime Minister Anders Fogh Rasmussen, Liberal Party (VENSTRE), Foreign Minister Per Stig Møller, Conservative Peoples Party (DKF); Estonia: Prime Minister Juhan Parts, Res Publica – Union for the Republic, Foreign Minister Kristiina Ojuland, Estonian Reform Party; Finland: Prime Minister Matti Vanhanen, Centre Party (KESK), Foreign Minister Erkki Tuomioja, Social Democratic Party of Finland (SDP); France: President Jacques Chirac, Union for a Popular Movement (UMP), Prime Minister Jean-Pierre Raffarin, Union for a Popular Movement (UMP), Foreign Minister Michel Barnier, Union for a Popular Movement (UMP); Germany: Chancellor Gerhard Schröder, Social Democrats (SPD), Foreign Minister: Joseph Fischer, Green Party; Greece: Prime Minister Kostas Karamanlis, New Democracy (ND), Foreign Minister Petros G. Molyviatis, New Democracy (ND); Hungary: Prime Minister Ferenc Gyurcsány, Socialist Party (MSZP), Foreign Minister László Kovács, Socialist Party (MSZP); Ireland: Prime Minister Bertie Ahern, Fianna Fáil – The Republican Party, Foreign Minister Dermot Ahern, Fianna Fáil – The Republican Party; Italy: Prime Minister Silvio Berlusconi, Forza Italia (FI), Foreign Minister Franco Frattini, Forza Italia (FI); Latvia: President Vaira Vike-Freiberga, Independent, Prime Minister Indulis Emsis, Green Party, Foreign Minister Artis Pabriks, Conservative People's Party; Lithuania: President Valdas Adamkus, Independent, Prime Minister Algirdas Mykolas Brazauskas, Social Democrats, Foreign Minister Antanas Valionis, Labour, Social Liberals – New Union; Luxembourg: Prime Minister Jean-Claude Juncker, Christian Social People's Party (CSV), Foreign Minister Jean Asselborn, Social Democrats