

## **The making of the EU system**

### **REFLECTIONS AND SUGGESTIONS FOR ACADEMIC CONTRIBUTIONS**

Contribution to the conference of the Jean Monnet network

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## 1. Looking back on a major research object

### a. Push and pull factors of research on system-making

An anniversary is a useful and stimulating occasion to look back at the work and performance of our Jean Monnet network. In view of many variations and conjunctures we can discern one persistent pattern and topic: Right from the start of the integration process in the fifties, lawyers and political scientist have dealt with the “constitutional issue”. The nature and the finalité of this political system *sui generis* have increasingly attracted the attention of scholars from several countries and disciplines. Within this broad debate a major topic remains the analysis and assessment of the EU institutional architecture – especially in view of what the high contracting parties have formulated as an objective of the Lisbon treaty: “desiring to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them”<sup>1</sup>.

The research on the issue which I call ‘system-making’ was part of intensive reflection. Beyond the everyday debate about ‘policy-making’ in the EU, the theoretical assumptions and ‘strategic choices’ underlying the evolution of the EU polity over the last six decades were a major object of high attention. Theorising European integration was and is a challenging undertaking; it has proceeded from various starting points concerning the nature of the phenomenon in question: The EU as a polity *sui generis* has subsequently been labelled as an international organisation, an instance of regionalism, or as a technical agency.<sup>2</sup> Authors used terms like “more than a regime and less than a federation”<sup>3</sup>, “a political system but not a state”<sup>4</sup>, a “federation d’états-nations”<sup>5</sup> or “Staatenverbund” (an association of national sovereign states)<sup>6</sup>. The analogy of blind men grasping each different parts of an elephant is used regularly in the political science literature.<sup>7</sup>

In our research on this beast we must be aware that the EU is a ‘moving target’. This adds a major difficulty: Our approach must necessarily take account of changes as the object of study develops. The European polity is situated in a constant process of change – sudden or gradual – through treaty revisions or other forms of political reform. Some of our approaches may thus become obsolete<sup>8</sup> as the object they capture might wither away. The evolution of our theoretical *acquis* is therefore partly driven by the evolution of the EU itself. ‘Pull’ factors from the transformation of

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<sup>1</sup> Treaty of Lisbon 2008: preamble, indent 7.

<sup>2</sup> See for a collection e.g. Wessels 2008: 27-28.

<sup>3</sup> Wallace 1983: 403.

<sup>4</sup> Hix 2005: 2-5.

<sup>5</sup> Delors 2004; Quermonne 2005.

<sup>6</sup> Federal Constitutional Court of Germany 2009: headnote 1.

<sup>7</sup> See e.g. Nugent/Paterson/Egan 2010.

<sup>8</sup> Cf. Haas 1975 on the apparent obsolescence of neo-functionalism in the 1970s.

the EU system induce scientists to focus on certain institutions or processes that attain political relevance at the respective time. Some historians of the discipline have pointed to the coincidence of an integrative phase in European politics throughout the 1950s and early 1960s and the simultaneous prominence of (neo-)functionalist theory in integration studies. Similarly, the reversion to intergovernmentalists explanations of European integration during the 1970s and early 1980s has been linked with a European 'dark ages' of widespread 'Eurosclerosis'. Yet again, the recent explosion in European studies (including renewed attempts at theorising system-making) not surprisingly coincides with a significant increase in relevance of European policy-making in every-day social, economic and political life in Europe as well as several attempts of system-making via treaty revisions and reforms.

However, what phases and aspect in the political process of integration we actually identify will again depend on which aspects of the system-making we concentrate on with our academic methods. Our sensibility to make out which changes in the process of European integration are to be classified as important does not necessarily and automatically coincide with political cycles. Certain 'push' factors from within the discipline induce scientists to focus on institutions and processes that *can* be analyzed and assessed employing the methodological tools at hand. This does not mean that those are – in hindsight – necessarily the most relevant ones. Scientists have therefore overlooked some developments simply because an approach which they thought to be appropriate or academically correct was not at their disposal or on their agenda. Hence, the importance of the European Court of Justice and the European Council in the course of integration was only 'discovered' after its impact became politically manifest. 'Pull' factors from the political system are thus mitigated by the array of approaches that are at the disposal of contemporary scientists.

Another distinction can be applied to the 'push' factors emanating from within the discipline: different sub-disciplines bring with them a different array of theoretical views. Thus, the prominence of International Relations scholars in early integration theory partly accounts for the dominance of the three 'grand-theories' of European integration which were applied to a process of integration that appeared to be an – ordinary or revolutionary – exercise in international politics. By the same token, the recent influx of the 'new institutionalism' and the so-called 'governance' approach in European studies can partly be explained by pointing to the heightened interest of scholars from the sub-discipline of comparative politics in the emerging political system that is the EU.

Consequently, the political object in question and the attempts at analysing and assessing it do not exist independently of one another. Rather, they feed back onto one another in such tight circles that it becomes obscure which one represents the hen and which one the egg.

## **b. Fascination and Frustration of the multi -polar state of the Art**

In view of these conditions it is therefore helpful to sketch some elements of the state of our art in the moment of entering into force of the Lisbon treaty as the latest step in quasi- constitutional system-making. What might be called ‘*acquis académique*’ (in analogy to Euro-speak) offers a strange mixture of trends: Over the last decades we observe a multitude of theoretical approaches. We find a rich menu of empirical analyses and thick descriptions as well as several sets of political narratives, ideological visions, "Leitbilder" (world visions), constitutional ideas and norms. Linked with this we identify reflected strategies for further system-making. The variations are enlarged by a broad range of methods applied to explore, explain, evaluate and extrapolate the insights into the EU system and its environment.

At the same time the borders of the accepted state of the art are certainly ambiguous. Like in all sciences, many on the academic market try to define what is appropriate in term of theory and method, but the norms are not clearly defined and – in any case – the entry to it is wide open. One – meta-theoretical – concern affects the core of the Jean Monnet activities: are “normative” contributions about the “best” form of the further constitutional and institutional architecture academically appropriate and correct? With a view on analyses, assessments and advice – not later than from the Tindemans report onwards – scholars have not hesitated to leave their “ivory towers” to participate actively and substantially in debate about system-making.

Timing, design and the targeting of contributions to system-making were and are significantly influenced by the pull from a considerable list of political initiatives. Official plans and activities to revise and amend the Treaties invite the academic world again and again to focus on demands of the political agenda. The pre-treaty initiatives like the Solemn declaration of Stuttgart and the treaty reforms from the Single European Act until the Lisbon treaty offered a rich field for analyses and assessments, though the real impact of academic contributions on the political actions of system-making certainly needs further research.

One sensation of looking at the state of the art is obvious: The picture of approaches related to the construction of this political system *sui generis* is marked by varied theoretical traditions, by an impressive vitality, frequent academic turns and a diversity, which generates a considerable degree of confusion and fragmentation. It is fascinating to observe a research area in full evolution with many stimulating and thought raising offers in strong competition for attention and dominance. Another view of this *acquis* is however frustrating: if you look for an easy way through the maze, efforts to clearly identify schools and phases of theoretical developments might be helpful to open gates for a first survey and general classification, but it is difficult to take them

as a guide through an ever wider set of multi-faceted and diverging offers. Some traditions vanish while others remain – and so do conventional cleavages of schools in the *acquis*.

Another general observation can be drawn: A growing number of academic institutions all over Europe and beyond<sup>9</sup> have contributed to this ‘grand débat européen’. The wider European academic research area has come to be remarkably shaped by a comprehensive Europeanization and even globalization. With English as a *lingua franca* and modern forms of technology the networks have been deepened and widened. Thus the relevant market for academic offers and demands has grown considerably with several forms of exchanges between the political and the academic world.

Depending on one’s stance, the state of the discourse on constitutional issues can be described as open and pluralistic or as anarchical and fragmented. As recurrent deficits one can observe that preliminary or partial results of single studies are seldom taken up and integrated into a clearly defined stock. A number of captivating insights and inspiring ‘takes’ of the EU’s reality are, thus, quite simply lost; the still relevant works by C.J. Friedrich and K.W. Deutsch are mentioned from time to time but most often not taken as serious starting point; also contributions from the “dark ages (of integration)”<sup>10</sup> of the seventies and early eighties<sup>11</sup> as well as from critical Marxist theory are forgotten or neglected even in times of economic crises. Contributions in other languages than in English are not really integrated into the *acquis*.<sup>12</sup>

We also observe that conventional approaches re-emerge after some time in a ‘reinvented’ form, with only slightly modified premises. At the same time, other seminal works within the *acquis académique* are not really replaced by new and perhaps more conclusive approaches in a process of theoretical Darwinism, but continue to direct our efforts in ever different shapes and new interpretations. Classic founding theories – such as (neo-)realist, (neo-)federalist and (neo-)functionalist approaches – are repeatedly revived in several forms of renaissance. Revisiting them often offers a considerable gain in insight even for changed constellations and after major developments in the EU system.<sup>13</sup> The attempt to establish ‘neo-neo-functionalism’<sup>14</sup> and new looks at federalist thinking<sup>15</sup> are a testimony for these efforts to exploit traditional theories stemming from an earlier generation of political scientists and political discourse.

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<sup>9</sup> See numerous efforts of the EU to establish centres of excellence all over the world, [http://eacea.ec.europa.eu/llp/jean\\_monnet/jean\\_monnet\\_en.php](http://eacea.ec.europa.eu/llp/jean_monnet/jean_monnet_en.php) (last visit 10/12/09).

<sup>10</sup> see Keohane/Hoffmann 1991: 8.

<sup>11</sup> see Schneider/Hrbek 1980.

<sup>12</sup> See e.g. works by Hallstein 1969; Dahrendorf 1973; Schneider 1977.

<sup>13</sup> See e.g. the relevant chapters in Wiener/Diez 2009; Chrysochoou 2001; Rosamond 2000.

<sup>14</sup> See Schmitter 2004.

<sup>15</sup> See e.g. Burgess 2004.

The debate about system-making is especially subject to historical revivals. Thus, the trends within the state of the art can be defined less by a radical change of paradigms<sup>16</sup> than by a considerable evolution with increasing differentiation and forms of pluralistic coexistence.<sup>17</sup>

In view of such a branching of the ‘*acquis académique*’, some research networks have repeatedly attempted to place publications of single authors on a pedestal or present them as key works. Such a move may indeed be necessary or stimulating, but it bears a considerable risk of artificially cultivating existing controversies between schools: points of difference between theoretical and methodical approaches can be stylised beyond their inherently given boundaries and the potential for securing mutual benefits of insight may be wasted unnecessarily due to academic competition. Thus a didactic review of scientific turns could reveal the valuable traditions and helpful lines of these developments; a chronological ordering of academic phases must not, however, lead to the unproductive narrowing of perspective confined to ‘footnote cartels’.

In the real life of academic discourses, even the more useful attempts at demarcating periods of theoretical approaches, usually possess a short life-span, as newer approaches are constructed and come to be established, thus shifting previously existing, seemingly fixed coordinates of scientific mental maps. In the same direction goes the warning not to overrate statistical evaluations: results of the Social Science Citation Index (SSCI)<sup>18</sup> can help us to identify key persons and projects which have high respect in our field; at the same time they might also be perceived as the by-products of battles between persons in leading positions of academic dominance with limited relevance for finding valid explanations.

Thus, notwithstanding all thoughtfulness and despite all self-stylizing of some authors and schools, no theoretical direction today can be asserted as the ‘dominant school’ for the debate on the EU polity, which were to definitively provide the essential points of reference within a dominant paradigm. Rather, the multitude and abundance of work on system-making in the political sciences alone, without even considering the other disciplines, can only be compiled in a multi-polar overview.

### **c. The return of the term “constitution” and... its sudden death**

In the academic and political debate the constitutional issue of system-making is in many variations an everlasting topic. As early as in the fifties we observe the confrontation between Spinelli and Monnet on the appropriate strategy for the European construction. Spinelli’s demand for a “*saut qualitative*” into a federation lost against the incremental steps proposed by Monnet,

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<sup>16</sup> See generally Kuhn 1988.

<sup>17</sup> See also Egan/Nugent/Paterson 2010.

<sup>18</sup> See e.g. the study of Hix 2004.

though this “arch saint of the European integration”<sup>19</sup> was promoting a “comité d’action pour les Etats-Unis de L’Europe”. We could also discover implicitly a similar controversy in the writings of Haas and the now forgotten European Hallstein.

It belonged to the peculiarities of this debate that the term “constitution” remained taboo for a long time. For many in the area of political science the term was perceived – like federalism – as a subject which was academically not correct. In view of deep and apparently unbridgeable gaps between federalist and intergovernmentalist visions, a prudent strategy recommended to leave this term out of the strategy debate. The term disappeared from the political agenda: even Spinelli and later Kohl, both seen as ardent supporters of European integration, were reluctant to propagate such a revolutionary strategy. In this decade, however, we saw a “constitutional turn”<sup>20</sup>, but also a “governance turn”<sup>21</sup>. Both discussions quite often constituted parallel activities which seldom met. In a nutshell you might argue that the academic works on the methods of the Lisbon ‘strategy’ were not really linked to the debates about the Lisbon ‘treaty’.

For the political debate one turn was the Humboldt speech by the then German Foreign Minister Joschka Fischer in the year 2000: In view of the deliberations leading to the Nice treaty he analysed “a crisis of the Monnet method that cannot be solved according to the method’s own logic” and demanded “the transition from a union of states to full parliamentarisation as a European Federation, something Robert Schuman demanded 50 years ago. And that means nothing less than a European Parliament and a European government which really do exercise legislative and executive power within the Federation. This Federation will have to be based on a constituent treaty.”<sup>22</sup>

Giscard d’Estaing, as president of the European Convention for the future of Europe, took this concept up in his opening speech: “In order to avoid any disagreement on semantics let us call it “constitutional treaty for Europe”<sup>23</sup>.

In good practice lawyers and political scientists – not least from the Jean Monnet network – took up long and diversified traditions on this term. They elaborated and offered definitions of a constitution. Key issues of deep controversies were:

- Which formal requirements are needed: does the acceptance of a constitution need more than another treaty change along art. 48 TEU; e.g. does a constitution demand an EU wide referendum?

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<sup>19</sup> See Milward 2000: 281-303.

<sup>20</sup> Wiener/Diez 2004: 10.

<sup>21</sup> Kohler-Koch/Larat 2009: xxiii.

<sup>22</sup> Fischer 2000.

<sup>23</sup> Giscard D’estaing 2002.

- Which substance and content does a European constitution imply or need: should it include fundamental rights as well as a vertical allocation of competences and a horizontal division of powers?
- Which pre-constitutional preconditions are necessary in term of identity: does a Constitution need to be based on one European people?

In reaction to launching a strategy for the European construction with this provocative term as a key component we could identify two schools of thought about its effects and impact: one perceived this term as a mobilizing factor for a new a post-national form of democracy and rule of law beyond the nation state and thus as the necessary bold strategy to create a unique political system. The opposite view also recognized mobilizing dynamics, but this time for the return of the conventional ‘Westphalian’ state with its grown national, constitutional and welfare dimension: Being under symbolic pressure the nation state apparently “strikes back”. If we look at the French and Dutch referenda on the ‘constitutional’ treaty as well as at the rulings of constitutional courts, such as the German “Bundesverfassungsgericht”, on the Lisbon treaty<sup>24</sup>, there seems to be an empirical verification for the second school: these events and interpretations apparently document a “victory” for the conventional and traditional nation state.

For enabling the ‘reform’ treaty of Lisbon member states purged the constitutional treaty of all state and constitution like symbols, titles and labels – leading at least momentarily to a ‘defeat’ for the use of the label ‘constitution’ for the future of EU system-making. With this sudden death the political debate seems to move back to former decades, but cosmetic changes in treaty formulations cannot conceal fundamental issues linked to the democratic and efficient functioning of the EU institutions which the academic debate has to tackle.

## **2. On our future research agenda**

### **a. The puzzle**

As one starting point for analyzing and assessing system-making and policy-making we should start with a basic question. With the entry into force of the Lisbon Treaty and after the intensive debate of the first decade of the third millennium, we are still – and now even more – faced with a major puzzle: how can we understand the surprising development from a narrowly defined community with a single issue – coal and steel – to a Union equipped by the Lisbon treaty with a state-like agenda, and how can we understand the territorial expansion from a small group of six countries to nearly pan-European membership of 27? And behind these queries the even more astonishing issue: How and why have sovereign nation-states increasingly shifted competences to

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<sup>24</sup> Federal Constitutional Court of Germany 2009.

the European level and why have they limited parts of their sovereignty by allowing independent institutions to take or execute binding decisions? Looking at these trends over more than half a century we want to offer an approach which might help us to:

- explore the ‘milestones’ in the evolution of such a dynamic system,
- explain what we can observe over the last decades,
- evaluate these developments with criteria that are normally used in normative approaches
  - thus we will look at debates about efficiency, effectiveness and legitimacy of the system,
- extrapolate findings into the future by
  - taking up lessons of the past for analytically valid scenarios and trajectories for the future of how the next phase of integration might look like,
  - using political programmes and strategies for identifying aspirations and anxieties concerning how the EU should or should not look like.

#### **b. Three time perspectives**

In order to pursue this list of questions for the Jean Monnet network we might use a research design which identifies three time horizons – taking up parts of the legacy of Braudel.<sup>25</sup>

In a ‘*courte durée*’ perspective we look at developments that have occurred over a short period of time, identified by the Preamble of the Treaty of Lisbon as spanning from the Maastricht treaty via the Amsterdam and Nice treaty to the present Lisbon treaty. This *courte durée* (Braudel’s *instant*), sees efforts by the heads of state and government to complete the series of treaty revisions aimed at eliminating various new challenges and demands partly as left-overs that had persisted since the Treaty of Maastricht. At the same time, this period has seen an extension in both scope and membership of the EU with considerable impact on the European political system.

Regarded in this short term perspective, the Treaty of Lisbon presents the preliminary culmination of recent efforts towards enhancing the Union’s efficiency and democratic legitimacy. Political actors involved in the production of the Lisbon treaty do not tire to underline that these objectives have now been achieved. Thus they proclaim to have no more treaty revision in the “foreseeable future”.<sup>26</sup>

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<sup>25</sup> Braudel 1980.

<sup>26</sup> European Council 2007.

As the new treaty introduces a number of changes and even innovations to the institutional architecture of the Union there will be a multitude of objects for academic research and teaching. One major focus will be the analysis of how the written, legal text will impact on the living, real world. Beyond such necessary work also a deeper assessment is needed. A series of institutional changes may well lead to increased efficiency as well as more democratic participation and control within institutions and procedures. It is however uncertain, if these effects will prove mutually reinforcing or if, on the contrary, they will turn out to be counterproductive in combination.

The Treaty of Lisbon sets itself the target of enhancing the democratic legitimacy of the EU institutions that was perceived as deficient. This question was addressed by stressing the principle of ‘dual or two pillar legitimacy’ for the EU as both a “Union of states” and a “Union of citizens” (see e.g. art. 16 TEU). The increased participation of the European Parliament in decision-making procedures and the introduction of a ‘citizen’s initiative’ serves to stress the democratic quality of policy-making at the European level. At the same time, the Treaty of Lisbon enhances the opportunities for national parliaments to intervene in these EU policy-making procedures. As national parliaments have frequently been considered to be losers of the European construction, their reinforced entry into the architecture is supposed to increase legitimacy of EU decisions at the national level. If national parliaments (or individual chambers) proceed to make active use of these provisions, enhanced legitimacy may come however at the cost of increased informal negotiations and possible blockages by the Court on the EU level.

In order to improve efficiency, the treaty introduces a number of new positions and offices providing the Union with faces and voices. The result of this is a novel ‘leadership quartet’, consisting of the newly installed permanent President of the European Council, the High Representative of the Union for Foreign Affairs and Security Policy (who will also be Commission Vice-President responsible for coordination of external actions as well as chairman of the Foreign Affairs Council), the strengthened Commission President and the rotating Council Presidency. A recalibrated balance will only emerge after some time with uncertain results that may upset the purposed aim of increased coherence of Union action across policy areas.

One major cornerstone of the claim for increased efficiency is the introduction of new rules for Qualitative Majority Voting (QMV). The present system was deemed unfit for an enlarged Union, a lower threshold was seen as an essential step to preserve the efficiency of decision making at the European level. Whether the new system really decreases the likelihood of decisional blockage needs to be observed.

Some more innovations introduced by the treaty are likely to have an impact on the nature of the European political system. The formal grant of legal personality for the Union, the codification of the catalogue of Union competences and the indirect introduction of the Charter of Fundamental Rights underline the changing, quasi-constitutional nature of EU system. All these accentuate the state-like character of Union system.

While these changes reflect partly already existing practices, they highlight the degree of political transformation that has taken place in Europe over the last decades. This observation leads to a second time horizon.

In a ‘moyenne durée’ perspective we should grasp the construction of the EU over the past 60 years. We might especially look for regular patterns for system-making. A central task would be to test major elements of the ‘acquis académique’ in view of their respective validity to explain the fundamental puzzle as sketched above. Such a research strategy includes revisiting several proposals by historians for a periodisation of stages in and trends of the EU’s emergence and evolution of the institutional (and constitutional) architecture. From this perspective, we should intensify the debate about

- the ‘end of the history’ for EU system-making as proclaimed by the European Council when signing the Lisbon treaty (see above),
- constitutional ‘thresholds’ in the evolution,
- a ‘collapse (of the EU system) by overstretch’ due to impacts of enlargement and building a too large club.

In this time perspective we need to take exogenous dynamics – such as changes in the international system – into account as a major factor for explaining the emergence and evolution of the EU system.

Shifting the focus of observation from ongoing policy-making on such longer term developments opens the perspective to an even more far reaching research dimension, namely to locate the construction of the EU system in a ‘longue durée’ perspective. In order to analyse the making of the EU system it would be short-sighted not to take into account large scale developments that take place over longer time-spans than those captured by most studies of European integration.

At the root of this debate one major point of departure are structural and functional developments of the ‘state’ itself. With that view we might look at the Lisbon treaty with four different interpretations of the relationship between the EU and the long term changes and trends of European nation states:<sup>27</sup>

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<sup>27</sup> Cf. Hofmann/Wessels 2009.

- *Irrelevance of the EU system:* According to this interpretation, the impact of European integration on the integrity of the European nation state remains largely negligible. A member state does not need the EU more than other functional international organisations and temporary alliances for solving its major problems. The EU system can thus be perceived as a temporary phenomenon – bound to particular subject areas, discardable once its purpose has been fulfilled and ultimately irrelevant when regarded in a long-term perspective of the evolution of modern “Westphalian” states. The Lisbon treaty is therefore of limited importance; the question as to its impact on national statehood is false and leads to ill fated answers. The European state with all its characteristics is sufficiently well and alive. The Lisbon treaty might then signal indeed the end of a period – that of unrealistic dreams and visions.
- *Towards an EU state substituting the nation state:* Another interpretation sees the evolution of the EU system as a major step in the evolution of an EU statehood. The emergence and evolution of the EU system is inherently geared toward some kind of federal state. The Lisbon treaty is thus a further building stone to a novel edifice in which the grown nation states are increasingly substituted by a new constitution-like set-up. Following such a trajectory the evolution of EU system can be assessed in two opposite directions: The Lisbon treaty can be regarded as a further step towards the necessary substitution of the discredited nation state, or as a major and increasing threat to the solely legitimate features of national sovereignty and identity.
- *The EU system as the Rescue of the nation state:* The EU system might however also be perceived as the “rescue”<sup>28</sup> of the nation state. Rather than establishing an independent supranational sphere, it will strengthen the national level. The Lisbon treaty will be a next step for extending the power of member states by increasing their capacity to deal with additional challenges more productively. Integration is then a tool for problem-solving. The process does however not move beyond a certain red line or threshold of national sovereignty, the transformative impact of the EU system is limited. National legitimacy is at least de facto reinforced by an increased capacity for output performance.
- *Transformation towards fusion:* The EU system might also be seen as a next stage in the evolution of the nation state: building on century long developments the EU will add major new elements and thus change major features of the Westphalian system. Problem-solving is of major importance and the necessity to face novel challenges forces states to seek more supranational solutions. The Lisbon treaty signals another step in sharing national and European competences and legitimacy resources in a political and institutional process of fusion. National actors are thus better equipped to face challenges for their national societies,

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<sup>28</sup> Milward 2000.

but at the cost of fundamentally changing the nature of the nation state at least in its conventional understandings.

The inherent ambiguity of the evolution of the EU system and its impact on national sovereignty is highlighted by the fact that all four interpretations coexist in the Lisbon treaty text and in the intensive discussion on its meaning. We do not find any final falsification of any of these proposals.

### **c. The fusion thesis as one offer**

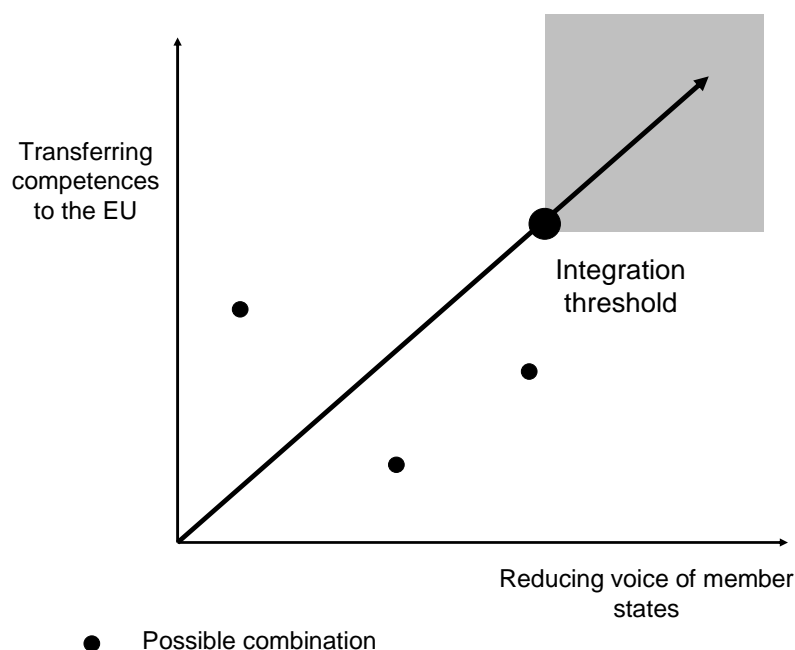
In taking up the last set of interpretations my assumption postulates that the Lisbon treaty – like former treaty revisions and amendments – documents a specific reaction of modern European states to general challenges. For developing a respective research design I suggest to analyse the work and activities of the European Council as the key institution for system-making. My general assumption is: The heads of state or government of the modern nation state are confronted with a fundamental dilemma – irrespective of the specific time and place. In constellations of mounting transnational interdependencies – be they caused by long term structural developments such as globalisation or short term external shocks (or a combination of both) – member state governments can no longer perceive the (nation) state to be the optimal – or at least the more effective – problem-solving area for immanent policy challenges. In order to cure this “performance disease” they follow a fundamental propensity that I call the “problem-solving instinct”: the European Council as an arena for common problem-solving offers them the opportunity to regain the capability to tackle expectations of their constituencies they can no longer meet on their own by national competencies and resources. Pursuing effectiveness and efficiency in reaching problem-solving decisions, they increasingly perceive the need to share competences and decision-making powers with institutions the EU treaty characterises as “independent”. At the same time they face strong incentives to use their “club” for safeguarding national sovereignty; or at least for saving a strong voice in the institutional architecture; I call this the “sovereignty reflex”.

Both propensities are linked with respective notions of legitimacy: Whereas the problem-solving instinct favours the concept of “output-legitimacy”, by which a political system is judged as legitimate if it effectively delivers the expected results, the sovereignty reflex is based on an understanding of legitimacy that stresses short chains of delegation and direct accountability of elected decision-makers from the people in national democracies (part of the “input” legitimacy). From this general assumption about the dilemma constellation of member states I develop a thesis which I call “fusion”. This approach postulates that the process of integration is driven by a basic trade-off between the propensity for increased joint decision-making (the problem-solving

instinct) and keeping national autonomy and influence (the sovereignty reflex). Taking up the traditional vocabulary of integration studies, the European Council is thus subject to both “supranational” and “intergovernmental” logics.

Building on definitions from the ‘*acquis académique*’, this approach differentiates between two different dimensions of supranational integration (see Graph 1). The first dimension of supranationality (vertical dimension) is expressed as a transfer of national competences towards the EU level. A second (horizontal) dimension concerns the reduction of national voice in the decision-making process within the EU institutional architecture. This is captured mainly but not only by the loss of national veto (through the use of majority voting in the Council) on the one hand, and by the increasing participation of nominally autonomous EU institutions, including veto-like powers by the European Commission and the European Parliament.

**Graph 1: European Council’s choices in the dilemma constellation**



In the long term trend, however, I expect the European Council to take incremental decisions moving the allocation of competences and voice towards and eventually across what I call the “integration threshold”. This point in the matrix is characterised by a real shift of competences to the EU level, to the what the Lisbon treaty calls ‘shared’ and ‘exclusive’ competences and a significantly reduced voice for the member state which is exemplified by ‘the ordinary legislative procedure’ in the Lisbon vocabulary; i.e. monopoly of initiative for the Commission, co-decision with the EP, majority voting in the Council and the shadow of rulings by the Court of Justice.

My counter-intuitive expectation is that the European Council functions as a multiplier and active user of spill-over pressure. Taking full account of the role and relevance of what the literature generally calls supranational norm entrepreneurs (such as the Commission, the European Parliament and to some extent the European Court of Justice), the European Council – though intergovernmental in its composition and alleged nature – centrally shapes the evolution of the EU system towards an increasing shift of competences and reduced national voice. This thesis stands in conflict with major lines of the public and academic debate about this body. Though there is apparently some common ground in the ‘*acquis académique*’ on the way the European Council functions, the state of the art reveals more controversies regarding the assessment of the impact of this institution on the EU system and its institutional architecture. While the European Council is generally held to constitute a “system of collective leadership”<sup>29</sup> of “principals”<sup>30</sup> few analyses venture towards a more general and theoretical explanation putting the European Council into a broader context in the emergence and evolution of the EU system and – linked to that development – relating this body to the evolution of the state in the last decades.

### **3. Conclusion: a perpetual (Lisbon) status quo?**

With the entry into force of the Lisbon treaty we might witness some kind of historical milestone and watershed not only in the patterns of policy-making within the revised institutional architecture but also in view of academic works on this strange system *sui generis*. In many ways the Lisbon treaty will force us to intensify our research and reflection on system-making. The issue of “enhancing efficiency and democratic institutions” needs to be treated with empirical evidence, which we will observe in the next phase of the EU history. Even more, we should pursue deeper analyses concerning longer term developments of the EU system in context of the changes of European states.

Sober analyses of the past invite us to reflect about the Lisbon stage of the EU’s evolution and to speculate about possible developments of this system ahead.

For the short term perspective we might add to a revised research question: does the present Lisbon constellation of the EU document a stable equilibrium – a ‘constitutional settlement’<sup>31</sup> – for the years to come? Would any proposal for further steps of deepening then remain an illusion?

In view of such an issue one line of argument stresses that leaders of EU system-making have no energy left to engage themselves again in this frustrating game of concluding and then ratifying complex texts which are difficult to sell to a sceptical or uninterested public. Their dictum in the Lisbon summit that the Lisbon treaty is the final treaty revision ‘for the foreseeable future’ indicates this fatigue. Major political actors apparently identify borders set both external and

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<sup>29</sup> Ludlow 2005: 3.

<sup>30</sup> For more on the principal-agent approach see Pollack 2003; Tallberg 2000.

<sup>31</sup> Moravcsik 2008.

internally. Governments of Member States thus might have given the European construction a form and function which is definite for years to come. The EU might thus have reached a lasting internal equilibrium with a working institutional balance and a saturated geographical extension – perhaps similar to the ‘golden threshold’ of Augustus, which fixed the nature and realm of the Roman Empire for centuries.

Another line of argumentation does not look primarily at the preferences and moods of actors but at what they expect to be the inbuilt dynamics and logics as they assume that agency is a dependent variable of structure. This school of thought identifies inbuilt factors pushing for more integration and perhaps enlargement until an ‘integration overstretch’ is reached. Exploiting works on ‘imperial overstretch’<sup>32</sup> or on the ‘tragedy of empires’<sup>33</sup> this thesis claims that the Union is forced to extend its natural borders to a still to be defined threshold if security and economic interests are taken into proper account. As a major indicator for further pressures, adherents of this view may point at the repeatedly voiced interest to enlarge to at least 35 members (Balkan countries and Turkey).

Perhaps even more important and more general is the view arguing for ‘unfinished business’: this thesis claims that in spite of much frustration by the actors there is not yet any efficient and effective balance between the problem-solving instinct of member governments, which ask for more and better solutions on the EU level, and the sovereignty reflex, which pushes them to keep legal competences and political voice in national hands. Given the demand and need for EU policies, especially unexpected crises will put even the Lisbon treaty under ongoing stress for amendments and revisions. In whatever form – be it by changes of the legal or of the living architecture – the status quo is then not stable.

In view of the financial and economic crises – reflecting un-intended consequences of the intended globalisation of European economies – there is no standstill, especially as external shocks highlight dialectics of the fundamental dilemma. With the Lisbon treaty as some kind of fixed point of reference, the policy-led research focus might again shift away from the quasi-constitutional system-making issues of treaty revisions to issues of policy-making within the now altered institutional architecture. Our analyses and assessments of those activities in the real world of the new EU treaty will however affect the issues raised by the debate on system-making not at least in view of the future of the nation state.

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<sup>32</sup> See Kennedy 1987.

<sup>33</sup> See Mearsheimer 2001.

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