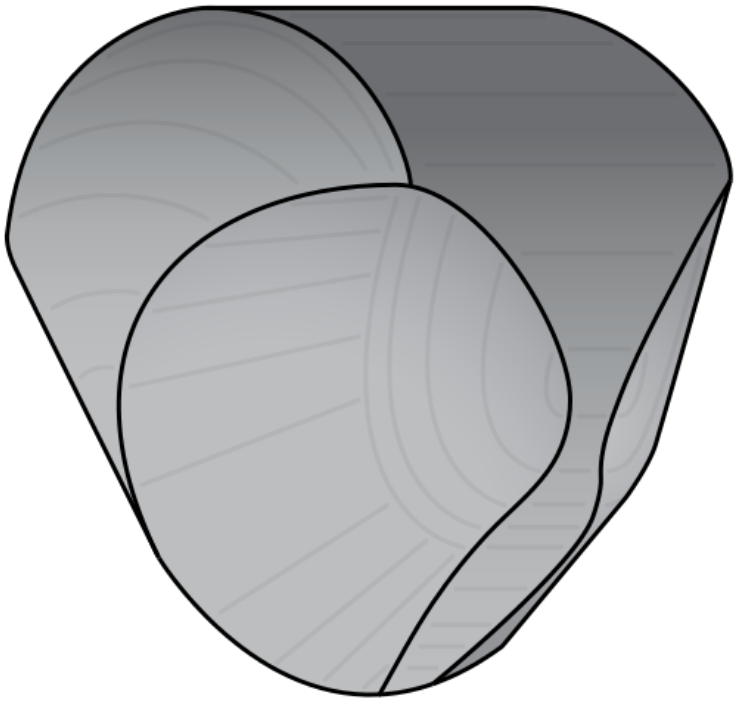
EQUILIBRIUM

Institutional Balance: The power dynamics of the European Union



"When you're in the storm, you have to ride it out and never change direction - that's the only way to come out of it well."

Jean MONNET

Attila Nuray

Budapest, 2020.

Foreword

Hungary's accession [1]to the European Union has undoubtedly been an inevitable milestone in the long-term continental survival of the millennial nation. Anyone who denies that the accession to the Council of Europe in 1992 and then to the EU in 2004 was indispensable for Hungary's economic, cultural, legal, political, defence and infrastructural development is mistaken. However, already at the dawn of the 1990s, the political stance taken by the Antall government in favour of a much-needed Euro-Atlantic integration defined Hungarian domestic and foreign policy to an extraordinary extent, for decades - and, because of its organic nature, still does to this day - and, in particular - and this will be significant from the point of view of our investigation - Hungarian lawmaking, judiciary and constitutional administration. In the opinion of[2] many, the Hungarian national interest suffered a long-term deficit in these two periods, to varying degrees, but this was not initially due to the EU's integration policy, but rather to the country's harmonisation strategy - or lack[3] of it. Prior to accession, at the dawn of the new Hungarian rule of law: membership of the European Council on 6 November 1990, and later OECD[4] accession in 1996 and NATO accession in 1999, all derived the newly established rule of law from a different direction. All this is due to the oft-stated statement[5] that the Antall government, apart from attracting capital to Hungary in a unique way compared to the former CIS states, considered Western democratisation, the domestic implementation of new legal (principled) and market (functional) institutions as the only solution to all the problems of the booming nation. Following this influence, the overzealous harmonisation of the doctrines of the organisation after membership of the Council of Europe 'hooked' the development of domestic law, which was actually democratic and, relative to the time dimension, could be described as organic, to no advantage. The question arises, which also provides some space for this research, as to

---

[1] Hereafter: EU or Union.

[2] SIMON J. (ed.) , 25 years of freedom in Central Europe: economy, politics, law. Cepoliti Publishers (2015)

[3] Prof. Cservák illustrates this period with an exemplary analogy; "*Our accession to the European Union was marked by a mixed atmosphere of anticipation of the expected benefits and excitement about the potential side effects. Hungary, or rather the individual state bodies, wanted to fulfil the lessons of integration like an eminent student, going beyond the obligation of legal harmonisation in the narrow sense" (CSERVÁK, 2020)* i.m.

[4] *Organisation for* Economic Co-operation and Development

[5] GAZDAG F. - KISS J. L. - Debt crisis and foreign policy, or reflections on the foreign policy of the second Orbán government (2015)

what are the guarantee institutions and legal mechanisms that ensure the sovereign protection of the "Hungarian National Interest" in a hierarchical - and idealised - supranational institutional system. In doing so, we necessarily also examine where the actual limits of sovereignty transfer lie. At the beginning of my work, in I. I consider it important to place it in its historical context, in order to examine and organise it: what were the principles and legal foundations that may have influenced the development of the historical characteristics, practices and institutions of the European nations, which later, while promoting the ideal of cultural and legal [6]diversity, were clearly driven by the economic and political interests of the founding member states, laying the foundations of a transnational principle and - increasingly as a consequence - a legal basis, thus creating an almost unlimited political advantage for the 'equals' of the Union and the world. But I would be cautious about using the analogy that the newcomers are left with only the *'chewed-up bones' of the rule of law*, all the more so because recent events[7] at European level have revalued the eastern and central European states, which have been pursuing national policies with a high level of social support, whereas in the West[8], the demographic restructuring[9] and the huge increase in class-struggle[10] attitudes, partly as a result of the latter process, and the emergence of a popularisation of extremist ideas, point to a lack of social support in these 'ancestral democracies'. There is, however, a tendency for crisis situations, whether global[11], EU or isolated at national level, to contribute to the sounding of the deepest sovereignty alarm bells of nations, bringing to the surface the most fundamental layers of law, leaving room for their questionability. Current events in the US[12] highlight the important fact that even the largest economic and military power centres are extremely

[6]Treaty on European Union (TEU); Article 4. (2).

[7] We can talk here about the migration crisis, the lack of social support for European policies, or the global viral situation.

[8] The focus of my research in this area was mainly on France and Belgium.

[9] POKOL, Béla - The End Days of Europe (pages 138-148) - Kairos, 2010.

[10] HALIMI, Serge, Pierre RIMBERT. "Lutte de classes en France." *Le Monde diplomatique* 2 (2019)

[11] At the national level we can mention the red sludge disaster, at the EU level the migration crisis, at the global level the economic collapse of 2008 or the COVID-19 crisis.

[12] It is also important to mention the alleged cybernetic influence of the presidential election, and a new dimension of topicality: the emergence of a long-standing latent class-warrior perception, cloaked in the mantle of equality.

vulnerable in today's digitalised environment[13]. All the more so because digitalisation also allows for an increasingly direct[14] element of popular representation within the institutions of democracy! *Thus, authority and control over them have emerged as new guarantee standards for the requirement of "security at all times". In my polar opinion, these attributes of the state continue to be most fully guaranteed by nationality - or at least by the belief[15] in it - and by national belonging*. This becomes extremely significant from the point of view of our inquiry; because the aim of the Union is the long-term global survival of Europe as an economic, political and cultural factor. However, all tendencies point to the fact that the preservation of national diversity - and thus of national interests - and the future assertion of the classical Eastern traditions of fundamental and public law (legitimation) are opposing dimensions of Europe's legal development. In the long term, the scales will undoubtedly tip towards the common interest and nationalities will be absorbed into the 'European whole', because national interests will become[16] counterproductive as we move towards an increasingly federal structure. This process could be halted if the democratic deficit were not an unprecedented part of EU decision-making, which is in fact concentrated[17] in the hands of a very narrow (interest) centre and not free from international – and economic – influence. However, my views on the domestic and global dimensions of current political events are not the least of my concerns in this work, but the following lines can only gain their full meaning in the context of world events.

---

[13] KLEIN, T. TÓTH. A. Introduction to Info-communication Law (2017) pp. 107-111.
Also CSERVÁK, Cs. The impact of digitalisation on the exercise and enforcement of fundamental rights. ; Conference on the Impact of Digitalisation on the Exercise of the Rights of Persons and the Protection of Privacy, Budapest, Károli Gáspár Reformed University, Faculty of Law and Political Sciences (2020).

[14] Here the conceptual notation is not comprehensive enough: popular representation is *more crystallised* and more widespread than ever before in history.

[15] In this sense: the unifying effect of the idea of descent from a common ancestor.

[16] CSERVÁK Cs. Constitutional aspects of the European Union - with special regard to Hungary's accession, Study (2020), a summary of the ideas contained on pages 3-7.

[17] POKOL B.: EU power structure and EP elections. Legal Theory Review, 2019/2, pp. 3-12.

In my opinion, the development of law can never be legitimated by the accelerated social changes, by the multitude of regulatory needs that have arisen, because law - in the abstract sense - shapes society itself, and thus its future; and, grotesquely, the social need for law itself! It follows that man-made regulation, with its claim to totality, must cover every possible future event that may occur, and it is essential to define the principles and guarantees along which we must proceed (both politically and legally), across generations. However, these principles must be established in such a way that they cannot be overturned and cannot be used as a means of exercising power!

This idea seems particularly important when considering the positive and negative legislation of the Union: in Chapter II. I will turn to the increasingly dominant phenomenon of the Union: the democratic deficit[18], which has given impetus[19] to the pens of countless Western thinkers and has become a recurrent theme for the critics of the integration. However, in contrast to the majority, we will examine this phenomenon through the lens of Béla Pokol's theory of juristocracy applied to the EU legal environment for this purpose. The phenomenon also has implications for European supranational adjudication mechanisms, their precedent law, and the use of preliminary rulings, and so I will present my position on the application of Community and fundamental law in this work, through the practical, functional implementation of the obligations and legal hierarchy arising from the individual treaties. In the light of the case-law of the Courts[20], I will examine the extent to which the different supranational, often global, jurisdictions, the domestic adaptation of external standards, the vertical and horizontal[21] delegation of powers, affect the domestic implementation of jurisprudence as sovereign law in practice. It should have become obvious to the meticulous reader that I intend to approach the question of national sovereignty through the relationship between internal and external law and through a comparative analysis of the functions of the various branches of power, and that I also attach importance to the establishment of historical

---

[18] KÖRÖSÉNYI, A. Democratic deficit, federalism, sovereignty. The European Union from a political theory perspective. *Political Science Review*, (3), 143-164 (2004).

[19] ROSANVALLON, Pierre. Le déficit démocratique européen, *Esprit (1940-)*, 2002, p. 87-100.

[20] Hereafter we mean the Court of Justice of the European Union and the European Court of Human Rights.

[21] In this conceptual resolution, "vertical" refers to the transfer between the legal systems of the Integration and the Member States, and "horizontal" refers to the phenomenon of sovereignty transfer between the legal systems and institutions of the States. See the reflections in the third part of this work.

and legal-historical parallels, due to the organic nature of law. Over the last two decades, a great number of works have been produced, both in Hungary and abroad, on the history[22] of European integration and its relations[23], in a virtually infinite number of different aspects and dimensions, and for this reason these fundamental issues will be dealt with only in respect of the elements of value to our study, without claiming to be exhaustive. The chapter will provide an inexhaustible source of inspiration for examining the delicate balance between the need to safeguard national sovereignty and the need to comply with the international treaties in force and the institutionalised legal system that they 'feed'. We shall not stop at a mere examination of the question; we shall try to find answers to the question of what guarantees and institutional systems might play a role in the long and short term in subordinating the above-mentioned balance of sovereignty - and thus the primacy of the national interest.

I think it is important to note that, because of the competitive format, *my work was born with a need for generality and not specificity*. This claim also stems from the fact that in my research I seek to justify my hypotheses by mixing the original French literature, both contemporary and modern, with the modern and classical trends in Hungarian political science and jurisprudence. Consequently, and for reasons of scope, certain issues need to be examined in relative depth, while others can only be touched on superficially, in order to ensure coherence. It should be mentioned here that a knowledge of the concepts[24] of external and internal sovereignty and the often detailed delineation of the system of powers, as well as at least a cursory review of the literature cited, may prove indispensable for the reception of the thesis. For this reason, and in the interests of clarity, I intend to present my annotations, connotations and references in the form of footnotes in my work, which is otherwise deliberately - with varying degrees of success - intended for a wider audience, because it is my interpretation of the competition form:

"From students, for students!".

---

[22] On this topic, see. See the works of István Németh on the history of integration.

[23] Particularly noteworthy here is László Blutman's extremely precise work; The enforcement of international law in Hungarian law: conceptual framework.

[24] see. BIHARI, M. "The theoretical foundations of modern sovereignty" ; The internal and external environment of sovereign state power. MTA, (2015)

I. History of European integration and power

The origins and dynamics of power in the Holy Roman Empire

The first known appearance of the idea of a united Europe dates back to 732[25], the Battle of Poitiers. After the invasion of the Iberian Peninsula in 611, the push of the Islamic (Moorish) forces from the south pushed the tribal nation-states, which had been segmented after the break-up of the Roman Empire, out of their status quo. It was here that, for the first time in the history of Europe, the desire to distance ourselves not only geographically but also culturally and ideologically from the source of the threat was formulated. For *the first time, but not for the last*[26], European identity[27] was born out of *necessity*. His encounter with the Arabs, which ended in victory but with huge losses, alerted Charles Martel to the need to extend Frankish influence beyond the borders of the kingdom, all the way to the seas, in order[28] to effectively defend the nation against the new threat. Martel could not have imagined at the time that the threat he faced would become a recurring phenomenon and a defining, cohesive factor in the next millennium of Europe. For the first time since the Roman Empire, with the coronation of Charlemagne in 800, the principle of 'dominum mundi[29]' was reaffirmed, and the concept of Europe's geographical unity was crystallised. The dual nature of the legitimation of power is perfectly illustrated by Professor István Kajtár's[30] analysis of the 'two swords'[31] theory, in which he divides the historical concept into two meanings: in the *subordinate version,* – the Church's interpretation, power is transferred from God to the Pope

---

[25] All years in this work are PCN.

[26] As is repeatedly the case throughout the work, Monnet's famous thought will be evident: "J'ai toujours pensé que l'Europe se ferait dans les crises, et qu'elle serait la somme des solutions qu'on apporterait à ces crises." ; "I always thought that Europe was made in crises, and that it would be the sum of the solutions that we brought to those crises.", translation by. Nuray (2020)

[27]. GONZALEZ, D. Evolution in the integration process: the first steps uniting Europe (2018). "*This shock provokes the awareness of "the European", beginning to distinguish themselves as an* ***identity*** *in front of the Arab peoples of the south"* p. 2.

[28] LOT, Ferdinand. Études sur la bataille de Poitiers de 732. *Revue belge de philologie et d'histoire*, 1948, 35-59.

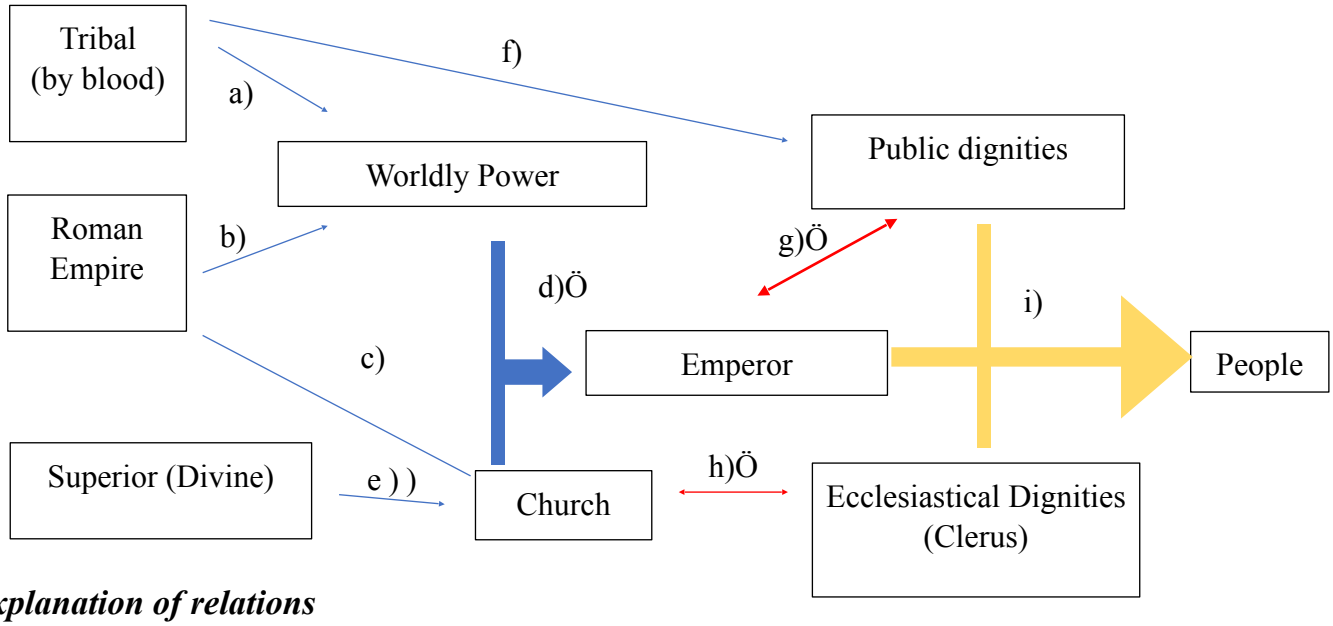
[29] World domination. - Here it indicates the tendency of the descendants of the Carolingian dynasty to make a universal claim to control the Western Christian world, going back to the institution of the Roman Empire. - https://www.larousse.fr/encyclopedie/autre-region/Saint_Empire_romain_germanique/142245

[30] In Memoriam (1951-2019)

[31] KAJTÁR I.; General Legal History I. , National Textbook Publisher, (1994.). p. 124.

and from His Holiness to the Sovereign in the form of two swords, which implies that it is (unlimitedly) vested in the Head of the Church himself, in his divine nature. This totalitarian, despotic conception then shifts over the centuries, under the influence of the Empire, towards the *Coordinating* interpretation, according to which the temporal branch of power ("sword"), derived from God, is vested directly in the Emperor (who possesses it without limit) and whose final fulfilment coincides with the end of the secularisation process. However, the sacral element (Principe) will remain a determining factor in the exercise of power for almost two millennia, until it is replaced by the principle of the 'individual', reinterpreted by globalist circles as *'independent',* in the process of enlightenment. Following the logic outlined above, we must examine the legitimation scheme along which the centre of power of empire seemed to be realised from the outset;

The power legitimation structure of the Holy Roman Empire



Explanation of relations

a) The idea of descending from a common Germanic ancestor, a commitment to the tribal leader that unites the myriad of smaller bloodline groups. The appeal to ethnicity [32]also played a part in the loose unification of a vast territory.

[32] It is an instructive parallel that more than a millennium (!) later Hitler built the overwhelming social support for his National Socialist terror dictatorship by bringing to the surface the same deep-seated bloodline ideas; Le Rider, J., Décultot, E., Bruckmüller, E., & Stiehler, H. (2003). L'Europe et le monde germanique. *Annuaires de l'École pratique des hautes études*, *134*(17), 293-316.

b) The title of King of Italy gives Italy, and therefore the Roman city-state, legitimate power, which is of great administrative, legal and symbolic[33] importance.

c) Because of the highly despotic nature of the Kingdom of Italy, it is important to mark the relationship.

d) From 962, the German king gains his office with the ecclesiastical blessing of the Holy Roman Emperor, consecrated by the Pope, thus combining the dual power of despotic and secular power.

e) The Church [34]undoubtedly derives its power - in the afterlife - from God.

f) Public dignitaries legitimise their privileges by their tribal affiliation and status.

g) After the election of the king in 911, the leaders of the Germanic tribe choose (delegate) a ruler from among themselves. Thus, a *reciprocal legitimacy*[35] appears.

h) The Pope legitimises the Clergy and here too we can observe a reciprocal legitimacy, because the election of the Pope is the task of the ecclesiastical dignitaries and they delegate the candidate. But we can witness the imperial influence in this area[36] throughout almost the entire existence of the empire. The boundaries of the titles of the civil and ecclesiastical dignitaries are blurred.[37]

---

[33] Here, too, we can mention a significant historical parallel: Napoleon Bonaparte wanted to rule Europe and the world with the power of the emperors of the Roman Empire.

[34] The term "supreme power" is a good illustration of the Church's contemporary conception of power as including all ecclesiastical, secular and supra-secular powers exercising dominion over a community of people, large or small - this monistic approach will be the Church's own until the end of the secularisation process."; Christian Encyclopedia, L, (2010), www.arcanum.hu

[35] VAUCHEZ R. A. " Légitimité réciproque", *L'Académie européenne; Politix, n° 89, 2010, 230.p*

[36] This overly despotic character could eventually lead to religious wars and, through the Reformation itself, to the process of the Enlightenment. What many forget is that hundreds of years of warfare and famine in Europe eventually led to revolutions which caused more organised yet even worse conquests or rebellion.

[37] http://www.rubicon.hu/magyar/oldalak/a_kozepkori_nemetorszag/

i) The Emperor, together with the dignitaries, implements, through them, a unilateral relationship of domination towards the people. This relation also involves reciprocity.

By examining the above relations - sufficiently relativized - we can observe a so-called *binary effect* in these early unification efforts;

A. The ***principal***[38] (**principle**) legitimating factor of power in the time dimension is almost exclusively the sacral, supernatural element. It takes the form of the Church, then Churches, but it also participates in the legitimation of other centres of power.

B. All other ***functional, expedient*** (**interest**) elements of power legitimacy:

- Blood ties (familiarity)
- Territorial demand[39]
- The need for protection
- The need to preserve the status quo
- Economic aspects (famine etc.)
- Personal motivations (tied back to the blood ties aspect)

A closer examination[40] of the period seems to show that, despite the apparent existence of principled ties, the exercise of power was ultimately legitimated solely by criteria of expediency, and thus the bases of principle were built[41] and segmented according to and in parallel with these criteria. Time has finally proved that, in such a vast, ethnically differentiated territory, ***the long-term primacy of principle over functionality has*** simply ***proved[42] to be illegitimate*.**

---

[38] According to Montesquieu's basic theory of power, principality was last represented by the principle of "VERTU", which died out with the Athenian kings. This void of principle is filled by the sacral element, religion, which will exist and remain exclusive until the emergence of the individual.

[39] In my opinion, the "dominuum mundi" can be placed in such a category of expediency, one of the model ideas of absolutism is in fact the combination of the need to protect and regulate the territory.

[40]Professor Stipta does so with a complete claim to completeness in his - internationally unique - oeuvre on the development of Germanic, Habsburg and Prussian law and state.

[41] See. 37th footnote.

[42] For evidence of this, see The Dissolution of the Churches, The Thirty Years' War. (STIPTA)

The German-Roman Empire as a precursor to European integration

Holy Roman Emperor	reciprocal legitimacy is achieved here towards the people	1	Emperor
Electoral College		7	Arbitrator
College of the Principality	Churches Group	25	Bishop
		8	Father
		41	High Priest (collective s.)
	Secular Group	29	Sovereign
		99	Noble (count, baron)
City College	Imperial Cities	51	Send to

With the coronation of Otto I in 962[43], we witness for the first time since the fall of the Roman Empire (476) the emergence of a comprehensive public entity, the German-Roman (Holy) Empire, which will remain in existence - with a Germanic preponderance of power - for nearly a millennium. However, its constitutional character, which we can appreciate, was only acquired four centuries later, with the adoption of the German Golden Bull of 1356, which laid down the chord of the emperorship and the electoral princes, as well as the rules for the nomination and election of the emperor; it delegated the rights of election and delegation to seven electoral princes, who were mixed[44] ecclesiastical and secular, but essentially represented the secular power. Because of the difficulty of maintaining influence, the Empire quickly moved away from the effective exercise of administrative rights there. Thus, nearly 500 years after Otto I, the last Roman coronation took place with the investiture of Frederick III as Emperor in 1452. However, the geographical distance from the Roman Empire left its ideological and legal influence and the process of reception intact, so that a kind of common law character of the Empire could begin to emerge. The first great organisation of state power was the Reichstag, the Imperial Assembly[45], which, after its first

[43] Le Rider, J., Décultot, E., Bruckmüller, E., & Stiehler, H. L'Europe et le monde germanique. *Annuaires de l'École pratique des hautes études*, (2003) *134*(17), 293-316.

[44] See the confusion of church and secular offices mentioned earlier.

[45] KAJTÁR I.; General Legal History I. , National Textbook Publisher, (1994.). p. 126.

meeting at Nuremberg, finalised its organisational structure in the course of the 15th century organised as follows:

The body, convened by the Emperor in a city of the empire, deliberated and passed a resolution on which the Emperor had unlimited right of return. The decision-making was *weighted, multi-level and consensual*; the colleges decided one after the other, so that the various colleges would have a certain *right of return, in* practice, along with the emperor. It is important to note that the Reichstag, despite its virtually unlimited power, had no constitutive[46] power, so the principle prevailed that it could not establish[47] law, that solely the *emperor or the head of the church could do so*; *the assembly could only establish and reconstruct existing law*.

The increased responsibility[48] for the application of the law was filled by the Imperial Court of Chambers, composed of vassals and nobles (assessors). This public law entity gradually moved away from imperial influence from the 15th century onwards and began to operate in parallel[49] with the Court of Vienna. It will have jurisdiction in the first instance over the immediate affairs of the realm and will also be the court of appeal in the second instance for property (feudal) cases. While there is no public/private distinction here, this dual structure does imply such a character. In terms of its sources of law, it interpreted Roman law as imperial law, canon law as ecclesiastical law, and in property/territorial relations the provisions of the Libri Feudorum and other regional legal codes, and in some cases it was obliged to revert to provincial written law or to the customary law tradition. In practice, therefore, the court applied the entire body of written and unwritten law of the time. Its procedural system bore the procedural hallmarks of canon law: the range of evidence brought to trial was wide, but it was extremely complicated and costly in terms of decision-making because of the delay, and its impartiality often put it in the crosshairs of the provinces. As a consequence, the principates often settled their cases themselves and did not bring them to the international forum, and often the private (noble) appeal was not guaranteed. This system of

---

[46] Founding law; see KAJTÁR I. General Legal History I. , National Textbook Publisher, (1994). p. 126.

[47] This is not so blatant in the interpretation of feudal relations, because law at this time - due to the sacral derivation of power - can only derive from God (through the Emperor). There is no natural law.

[48]GÖNCZI, HORVÁTH, RÉVÉSZ, ZSILINSZKY, STIPTA. Universal Legal History I-II. (2019). i.m.

[49] STIPTA , General Legal History I (1994) , Chapter 22.

public power, legislation, appeals and law enforcement resulted in a complex and impotent functioning in practice, as the above dynamics show. The separation of the Christian churches in 1054 also reinforced the tendency towards disunity and the fragmentation of centres of power across Europe. Thus, the following centuries were marked by a multitude of religious wars. The Lutheran Reformation of 1517 left no power structure untouched: it swept through all classes, from the peasantry to the clergy. In 1555, the Peace of Augsburg finally consolidated German particularism: the institution of the Law of the Landed Gentry[50] gave the aristocracy the right to choose the church in their own province. The provinces were enormously strengthened while the imperial power over them gradually weakened. This period of almost a century was marked by conflicts culminating in the Thirty Years' War of 1618-1648, which, after the Peace of Westphalia, completely divided the Empire spiritually. Increasing provincial particularism forced the imperial power to legitimise its (constitutional) authority on the basis of other, secular criteria and to introduce new public law instruments, which, despite the difficulties and the fragmentation of the Empire, more or less maintained its unity for more than a millennium. – *Although the Empire, even in its heyday[51], did not even approach the territory currently occupied by the EU, it is here that our historical perspective can first gain meaningful significance: if we project[52] the problem of the Empire's legitimate indecision onto the situation of a unifying Europe today, half a millennium later, the question of the lack of real unity arises again: vetoes (active or passive), national differences of interest, juristocracy and democratic deficit have meant that the Union has not been able to 'come to terms' with itself on any major global[53] - and often internal - issue since its inception. As a result, the EU's global influence is declining and its interests are being damaged in the long term. However, for us, the crucial difference in the parallel is that the Empire, in contrast to the EU, had (because of the theory of power of the time) a strong executive-constitutional branch of power, the Emperor, the absolute (public) custodian of the source of functionality and principality.* –

---

[50] "Cuius regio eius religio" elve. (KAJTÁR, 1994.) Op cit.

[51] By the reign of Charlemagne, we mean the immense territory occupied by the empire.

[52] While the above legal-historical-systematic perspective suggests to a certain extent that the centres of power were similar in their distribution and functionality to the institutions of the Integration we have been studying, and also assumes that their dynamics have changed little over time, I would caution against viewing these parallels without relativising them to the time dimension.

[53] GOULARD, Sylvie. Vers une politique étrangère européenne?. *Revue Projet*, 2004, no 2, p. 29-37.

Principal and Functional Foundations of Integration

After the horrors of war, amid pain and disappointment[54], on 9 May 1950 the foundations of a united, modern Europe were laid in constitutional form: the Schuman Plan[55]. In this agreement, the foreign minister – and an unrivalled economist – sought to find a long-term solution to the crisis by means of three main (functional) lines[56] of action:

a) Laying the foundations for economic union

b) Establishing a federal framework

c) The long-term, guaranteed anchoring of national interests.

The institutionalisation of a united Europe - and the avoidance[57] of further wars - would have been unthinkable without the unification of the Ruhr department's coal and steel production factors in a spirit of "economic solidarity". In parallel to this, Schuman also lays the foundations in principle for the external side of economic union, namely that other external states should benefit from these factors of production without discrimination. To achieve the internal side of economic unity, the crisis management politician identified a process as a solution, the initial step of which was the sharing and equalisation of the factors of production and economic factors between the two contracting states. The next step was the opening up of the economic unit to the new members, who would share the same rights and obligations (for the duration of the treaty), albeit on a proportional basis, from the moment of accession, and would also share the benefits of the economic centre, regardless of their production levels, in order to catch up. In his declaration, Schuman explains that this system would be heading towards dysfunction and a new differentiation of the poles of power without a common customs system as an objective, the principle of which the politician repeatedly formulates in his thoughts the European federation as the ultimate goal to be achieved.

---

[54] Schuman Declaration, para 2; " (...) l'europe n'a pas été *faite*, nous avons eu la guerre." ; "Europe *was not made*, we had the war". MONNET later reacts to this. (fn. 27 in NURAY, 2020).

[55] See Chapter I (fn. 26) of this work for the context.

[56] J.NAGY, L; The Political History of European Integration, Szeged (2005)

[57] According to the foreign minister, any possible war was thus not only theoretically but also functionally impossible "*(...) toute guerre entre la France et l'Allemagne devient non seulement impensable, mais matériellement impossible.*"

The first step was the establishment of the ECSC in 1951 and its signature by the six founding member states. This will be significant for us because, in László J. Nagy's interpretation, it was the first (modern) pan-European power organisation to include supranational elements of public law. The academic mentions that, although Britain refrained from signing the treaty for fear of its sovereignty, Schuman and his comrades[58] were sympathetic to this, stressing that, although they were aware of the obstacles – functional and principled – to ever closer union, they planned to overcome them by practical (economic) results. We can observe here that principality as a legitimating element[59] of power is in strong symbiosis with functionality (economic interest[60], avoidance of conflicts). It was this duality that was intended to maintain the unity of Europe, and it is still performing this fundamental task in the same way today – one need only *think of the relationship between the economic institutions and the Member States, which are willing to give up their most elementary sovereignty[61] in exchange for obvious economic (functional) benefits, but are also obliged to accept the European principle, both politically and legally!* - Under the operational leadership of Jean Monnet, the Marshall Plan to rebuild the ruins of a Europe in smoke seemed to work through the economic solutions of the ECSC, and in Rome in 1957 we witnessed the building of an even closer relationship. EURATOM, which brings the nuclear developments of the acceding states under one directive to maintain international competitiveness, and the Treaty establishing the EEC, the European Economic Community, mark the next step in integration. It is the latter that will be relevant for our analysis: although a large part of Article 248 of the EEC contains provisions[62] of an economic nature, there are also very strong constitutional elements; the preamble also contains – cautious – objectives[63] of political integration, and the form of the treaty implies a constitutional character. Although the absence of Great Britain

---

[58] Politicians De Gasperi (Italian) and Adenauer (West German), together with Schuman, saw the unity of Europe in a common Christian culture, a personality trait that contributed greatly to the Treaty.

[59] HAMZA, G. We don't want a rump Europe, 2002. Furthermore see. p. 7.

[60] As an element of functional power legitimacy.

[61] MÉNARD, O. *La souverainete monetaire entre principe et realisations*. 1999. Thèse de doctorat. Nantes. In fact already in Jean Bodin's theory of power, financial sovereignty (the exclusivity of coinage) was the main indicator of the sovereignty of the nation.

[62] These economics aspects are beyond the scope of the present work, but their importance is unquestionable: along 11 points, they have implemented the customs union between states over 12 years, thus ensuring the external and internal dimensions of the EU's economic unity.

[63] J.NAGY, L. "The founding member states are determined to lay the foundations of an ever closer union among the peoples of Europe" p. 27.

had an impact on the development of the Union, the new French President, Charles de Gaulle, did not relent in his efforts to deepen the unity of Europe. An exceptional statesman, he formulated his concept[64] of Europe in three principles which, despite his brief 11-year presidency, had a major impact on the shape of Europe as we know or want to know it today:

a) The *Europe of the States, which,* in contrast to the purely federalist tendency, called for a community of Member States, a **confederal character.**

b) *European Europe* - in principle, defines the position of European identity, of Europe as an autonomous secular pole. Independence from the American control that has been built up since the wars.

c) According to *his concept of an Atlantic-European Europe, in the* long term, it is not possible to count on a Western European entity alone, and over time it will become necessary to bring the states of Eastern and Central Europe into the community (and into decision-making), from the Mediterranean to the foothills of the Ural Mountains.

De Gaulle, partly because of his anti-US policies[65], sought to deepen West German-German relations. As a Christian Democrat, he was inspired by the success of his national policy at home and sought to transpose[66] it to Europe. However, the politician who laid the federal foundations of the modern French Republic did not believe in the supranational viability of this form of government, a determination which was also determined by his own ambitions for power, but even more so by the forward-looking realisation that a multiethnic Europe with a millennial history could not be realised on the federal model of the United States. The EEC[67] fulfilled its long-hidden ambition in 1973 with the accession of Great Britain, but it did so with the French patriarch no longer in office. The university movements that started[68] in Paris harked back to the anti-capitalist ideals of the revolutions. The result

---

[64] J.NAGY, L. (2005), p. 41 i.m.

[65] De Gaulle saw an international triumvirate of powers (Britain, France, USA) as the balance of power in the Western world, but the USA, as the winner of the war, did not go along with this. In the next sub-section on the supra-continental powers, we will see that de Gaulle's withdrawal from NATO in 1966 with great courage and national consciousness was both symbolic and practical. This situation was only restored by President Sarkozy in 2009, when France became a member of the alliance's 'common' public law directive.

[66] See: Letter from Charles de Gaulle to US President Eisenhower, 1958

[67] Which by then has the characteristics of a common market.

[68] GASQUET, Vasco. *Les 500 affiches de Mai 68*. Balland, 1978.

was a strike and a grass-roots revolution, the significance of which is unanimously compared in French literature to the Enlightenment. The revolutions of '68. The liberalisation of the movement, the loss of its extremism, made it possible to export the ideal as a political product, which led to the accession of a series of other states 20 years later, and with it the slow disintegration[69] of the Soviet Union[70]. This abstraction then led to a so-called 'Europeanism' standard, which each state sought to apply to its own legal system *as an eminence student*[71], in the hope of the conspicuous functional benefits of membership. Thus, the Community legitimacy of the principled guidelines could not have been achieved without the success of the economic foundations laid by Schumann and his allies: the dynamism of the deepening political alliance[72] was functionally underpinned by the European Monetary System and a common currency (Euro), created to standardise[73] the German and French currencies and maintain exchange rate stability against the Dollar. The economic achievements of the Community system and its successful response to the challenges[74] of the time laid the foundations for the next stage of political (principled) union. This led to the first comprehensive treaty amendment, incorporating the earlier founding treaties, with the enlargement of the Community's decision-making and consultative institutions and the consolidation of the composition[75] and delegation rules of the European Parliament (hereinafter the EP); the ratification of the Single European Act (EEO) in 1985, then by 12 states, and its entry into force in 1987. However, despite – or because of – its newfound popular representation, the EP's decision-making mechanism was increasingly moving[76] towards majority voting. This fact will become more significant in the following chapters.

---

[69] ROSEFIELDE, S. Les limites du liberalisme economique sovietique: la perestroika va-t-elle passer a la trappe?; *Revue d'études comparatives Est-Ouest*, 1991, vol. 22, no 2, p. 59-70.

[70] BEERS, M. C. L'identité européenne déclarée en 1973, *RICHIE Europa Newsletter*, 2007, vol. 4, p. 5-19.

[71] CSERVÁK, 2015. Op. cit.

[72] J.NAGY, L. The Political History of European Integration, Szeged (2005), p. 48.

[73] COHEN, D; MÉLITZ, J, and OUDIZ, G. Le système monétaire européen et l'asymétrie franc-mark. *Revue économique*, 1988, p. 667-677.

[74] Here we are thinking in particular of the solutions to the crisis caused by the rise in oil prices from 1973. See. COHEN, D; OUDIZ, G; and DE VILLEPIN, R. Enjeux du système monétaire européen. *Économie & prévision*, 1980, vol. 41, no 1, p. 3-37.

[75] Here we mean the election of MEPs on the basis of the principle of popular representation, which first took place in 1979.

[76] JACQUÉ, J-P. Conquêtes et revendications: L'évolution des pouvoirs législatifs et budgétaires du parlement Européen depuis 1979, *Journal of European Integration*, 1983, vol. 6, no 2-3, p. 155-182.

The EEO also gave rise to the European Council (Council), which initially played a purely consultative (informative) role, but as the EP's decision-making role diminished and polarised, the Council's autonomy as a supranational centre of power (decision-making) is becoming more pronounced. In 1992, we witness the ratification of the Maastricht Treaty, which laid the foundations for the EU's present-day public law structure. The changes and innovations[77] brought about by the treaty cannot be examined in this work; however, the amending treaty contains some relevance[78] for us because of its *pillar structure*[79], which is as follows:

1. The European Community (economic and political, in the broad sense).[80]
2. Common foreign and security policy.
3. Justice and Home Affairs.

Following the third pillar, the Maastricht Treaty also institutionalised for the first time a supranational Community system of sanctions, with the Court of Justice of the European Union (CJEU) at its centre, whose powers seemed to be further consolidated. The legitimacy of this body, which is to sit in judgement on the Community, was consolidated, in Jacques Delors's interpretation[81], by the '*Rechtsstaatlichkeit'*, the rule of law and the split of powers, which, as mechanisms of legal principle, had now been institutionalised. In his 28 years of political vision, while the principle-oriented[82] basis of integration is determined by the French foundations, his jurisprudence borrows from the reception of German constitutionalism. This principality, however, has also contributed greatly to the development of the dynamics of supranational jurisdiction, in which he also mentions the principle of proportionality and the principle of subsidiarity. This constitutional toolbox, in the light of the author's entire oeuvre,

---

[77] CHALTIEL, Florence. Le principe de subsidiarité dix ans après le traité de Maastricht. 2003.

[78] I think it is important to highlight the evolution over almost half a century of the three objectives listed alphabetically on page 10, which are now institutionalised.

[79] BUCHET DE NEUILLY, Yves. La politique étrangère et de sécurité commune: Dynamique d'un système d'action. *Politix. Revue des sciences sociales du politique*, 1999, vol. 12, no 46, p. 127-146.

[80] The triad is the *only* fundamental element of legitimacy of power, which, as we shall see, is embodied in the principle of "common interest" in the case-law of the Court of Justice. p. 14 (NURAY. A. 2020)

[81] DELORS, J. *Le nouveau concert européen*. Odile Jacob, 1992.

[82] NÉMETH, I. The National Socialist system of rule. In Limes, 2003/2, 19-31.

suggests a subjective[83] system of judgments based on values and not on facts, but Delors, with his usual boundless optimism, saw practical success in the Court's institutional independence and impartiality[84]. The new, comprehensive treaty created anomalies in the diverse constitutional arrangements of the member states. The comparative constitutional analysis[85] of these is extremely interesting and provides scope for much further study, but the significant element for us is that in many countries, constitutional amendment was a prerequisite for ratification, and in some countries (France, Denmark, Germany) it was subject to a referendum. In France, the result was extremely close: the 1991 referendum ended with a 69.8% turnout, 51% in favour of accession (ratification). President Mitterrand's party (the Socialist Party) had hoped that the constitutional vote would probe support for the elections, but he had set in motion a much broader phenomenon: the deficit of democracy in the public discourse sense. The result was much more dramatic in Denmark, where the adoption of the Maastricht Treaty failed on 2 June 1992 with a negative majority of 50.7%. But the economic[86] and defence[87] – functional – benefits silenced the delicate sovereignty alarm bells of the member states. Thus, with the entry into force in 1994 of the Schengen Agreement, concluded by the Nine, and the abolition of internal borders, the next stage of Rome's integrationist ambitions was geographically achieved.[88]

In parallel with this apparently successful integration process (economic and political), neo-Jacobin anti-capitalist social-democratic, liberal globalist circles no longer defended the interests of the member states with the same vehemence as de Gaulle did; they took advantage of the chiselling of the international legal environment to create and strengthen supranational, non-state organisations (NGOs) whose Europe-centrism or freedom from foreign influence was never proven. According to Béla Pokol, this influence has contributed greatly to the

---

[83] This issue will be examined in the final subsection of this chapter in relation to teleological reduction.

[84] To refute this, see the ideas set out in the last sub-chapter of this chapter.

[85] DUTHEIL DE LA ROCHÈRE, J. Les implications constitutionnelles pour un État de la participation à un processus d'intégration régional. *Revue internationale de droit comparé*, 1998, vol. 50, no 2, p. 577-593.

[86] DE SCHUTTER, Olivier. L'équilibre entre l'économique et le social dans les traités européens, *Revue française des affaires sociales*, 2006, no 1, p. 131-157.

[87] The NATO membership.

[88] The levels of development of European integration are examined in the chapter in a laconic way, in terms of their principle content. Further treaty levels will be discussed in the next sub-chapter only in relation to the development of the institutions.

emergence of the phenomenon of juristocracy, whose ultimate threads arrive across the ocean. In this context, the polymath does not neglect the influence of the United States on the development of modern constitutional institutions in Germany, the other great centre of power and economic power. Thus in Europe, which was only accentuated by the rapid adherence of the eastern hemisphere, a development which even France and Britain expressed concern about. The validity of Béla Pokol's thesis thus seems to be confirmed by Jacques Delors's ideas, now complemented by the Hungarian scholar's theory of juristocracy.

As a matter of fact, it is important to point out that the leaders of the international community in the broad sense of the term, in the interests of economic expansion, ignored the firm objectives[89] of Schuman and Monnet, which the Gaullists would have carried forward with the ideal of a Franco-African[90] community, thus abandoning the plundered and then "liberated" African continent[91], leaving behind a huge powder keg and many times the misery of the world wars.

In the light of the above, it is a cruel irony of fate that the French capital's airport, which serves transatlantic flights, is named after de Gaulle, the French embodiment of anti-imperialism, while the Paris hub of the high-speed rail network, which today links the whole of Europe, is named after his successor, Charles Pompidou, who successfully opposed him on the issue of opening up to the West.

---

[89] The Schuman Declaration: " L'Europe pourra, avec des moyens accrus, poursuivre la réalisation de l'une de ses tâches essentielles: le développement du continent africain."

[90]HUGON, P. L'Afrique noire francophone: l'enjeu économique pour la France, *Politique africaine*, 1982, no 5, p. 75-94.

[91] TURPIN, F. 1958, la Communauté franco-africaine: un projet de puissance entre héritage de la IVe République et conceptions gaulliennes. *Outre-Mers. Revue d'histoire*, 2008, vol. 95, no 358, p. 45-58.

II. The power dynamics of European integration

Branches of power in the EU and beyond; the issue of democratic deficit.

When examining the balance of powers at the level of integration, the eternal question inevitably arises whether the EU, as a supranational public entity, is a state in itself or whether it gains its partial or full[92] sovereignty from the Member States only through the treaties. This question – within the framework of this paper – we can certainly not even attempt to answer, but for the sake of our investigation we will be forced to make use of the **presumption[93] that** the European Union of our time possesses *at least some of the attributes*[94] *of sovereignty*, and thus undoubtedly takes 'sovereign' **decisions** in the capacity of a 'state' on certain issues. Consequently, and if by the EU territory we mean the area enclosed by the borders of the acceding states, and by supranational law the community spanning the legal systems of the countries covered by the treaties, it becomes important to differentiate conceptually between *supranational* and *supra-continental*[95] institutions in order to be able to examine the relationship of these powers to each other and to the Member States within a well-defined conceptual framework. Following the above logic, we can say that all supra-continental systems are supranational, but the reverse is not true – we are not using a new conceptual definition; the former is merely an expansive, broad interpretation of the latter. I believe that it is also necessary to separate this dichotomy in formal terms because, as we shall see in the course of this chapter, the *(contracting) states that participate in both* types of institution *usually have different weight in their actual decision-making, while these supranational and supra-continental institutions are closely correlated*. – To use a conservative meta-geometric abstraction, the latter embody multivariate (quantum) relations in comparison with the bivariate (binary) system of supranationality - For the above reasons, it is necessary to

---

[92] Sovereignty is "divisible", Blutman (2015). Op cit.

[93] Here: præsumptio as a basic tool of jurisprudence.

[94] BODIN, J. (1566) i.m. see. (TÓTH, 2015) Op cit.

[95] In this context; on the one hand, they are not just states, but also federations of states and their member states participate in decision-making through joint representation (if any). The concept of "supra-continental" found in foreign literature in other application contexts is, in my view, defined by this dual set of criteria, and is therefore independent of the actual extent of the state territory.

examine, at least tangentially, the evolution of the branches of power, now labelled with the supra-continental collective term, using a similar method to the previous one;

After the Second World War had left its mark on the League of Nations, which had been established in 1919, the need arose for a more powerful, closer, more public organisation. The United Nations sought to legitimise this functional bond with the same principled tools as its predecessor, drawing on the theoretical dynamism[96] of Kantian ethics ('Vers la paix perpétuelle'). The principle of collective security, according to which *'Peace must be secured by all, for all, against all and with all'*, proved to be extremely effective[97] in avoiding the major (European) conflicts of the future. Unfortunately, however, as Kant points out, peace almost always comes at a price; 'by all' has manifested itself in the form of NATO. Although this institution ensured the military unity of the acceding states and thus the physicality of peace, as an institution born of war, its rules and principles were to be defined by the victorious, the United States. - In *my opinion, this principled primacy has only become more aggravated to date; 'with everyone' has consolidated the global predominance of the US, which, by teleologising the principle of 'for everyone', has hitherto been able to create the dystopia of 'against everyone' at any time. With the phenomenon of juristocracy, these (global) interpretative standards of principle are infiltrating the judgments of the CJEU and thus the balance of power of the Integration.*- The International Court of Justice, established in 1945 as the judicial organ of the United Nations in its statute, has emerged as a supra-continental public law adjudicative body[98]. Its jurisdiction is legitimised on a subsidiary basis; it extends only to those states which recognise it. The Hague College has, according to French literature[99], had a major influence on the organisation, functioning and procedural organisation of the Court of Justice of the European Union. The other supra-continental (political) body of relevance to us is the Council of Europe, which was founded in 1949 at the instigation[100] and on the guidelines of Great Britain, not least the USA.

---

[96] In my opinion, the dynamic character of Kant's theory is better illustrated by the modern French translation of the title of his work, which reads; " **Towards** an eternal peace". Nuray (2020).

[97]Quoted verbatim from: DEFARGES, P.M. De la SDN à l'ONU. *Pouvoirs*, 2004, no 2, p. 17.p.

[98] Not to be confused with its poenal counterpart (the International Criminal Court) which was created in 2002.

[99] SWEET, A.S. , CAPORASO, J. A., et CAMINADE, M. La Cour de justice et l'intégration européenne. *Revue française de science politique*, 1998, p. 195-244.

[100] (POKOL, 2015.) i.m.

However, the impact of this body, which also laid the foundations for the European Convention on Human Rights, on the structure of the EU institutions of our time is very accurately illustrated by Helen Wallace and Philippe de Schoutheete in their short study[101] 'Le Conseil Européen'. Its activities will be of interest to us when it creates the ECHR (European Court of Human Rights) and takes its supra-continental place in the global system of powers. The Strasbourg body now rules not only on public law but also on *private law* matters, which are subject to the jurisdiction of the 47 ratifying states and are binding on the Member States. As the highest level of private law enforcement, there is no right of appeal – geographically speaking either – against the judgments of the forum created by necessity[102].Almost as in the case of the Imperial Court, the contracting parties either accept its unfavourable judgment or they do not, but even with the prospect of retaliation, the latter seems to be the case[103]. It is this institution that will set the art of private conflict of laws on the road to becoming a discipline, which we will try not to touch upon in this work, with due delimitation. However, the emergence of this body is also of great interest from another point of view; it was the first international forum to *presuppose,* in its procedures and its modus operandi, a kind of *supra-continental private constitutional court.* In my view, this was necessary because the rapidly expanding supranational community required a restructuring of the transnational legal (contractual) regime, for which the theoretical foundations of the enlightenment were also invoked, but which could not bring about any significant change in principle to the basic constitutional legal structure, which was born out of necessity, because of its international treaty form[104]. This prompted the respective leaders of the federation to create a series of new legal institutions and supranational bodies[105], to extend the existing ones and to consolidate them at the level of the basic treaty. *It can therefore be stated with great certainty that, on the basis of the above and the principle of pacta sunt servanda, we are talking here, as in the case of the historical parallel, about a mere interpretation and reconstruction[106] (addition) of the*

[101] DE SCHOUTHEETE, Philippe et WALLACE, Helen. *Le conseil européen*, Notre Europe, 2002.

[102] See. p. 10.

[103] See. AFFAIRE BOSPHORUS HAVA YOLLARI TURIZM VE TICARET ANONIM SIRKETI c. IRELAND 45036/98 - 30/06/2005.

[104] SZALAI A. "International treaties" in JAKAB András - FEKETE Balázs (eds.): Internet Encyclopedia of Legal Studies (International law section, editor: SULYOK Gábor)

[105]See. (POKOL, 2018),

[106] See hp 48.

*law: the **real constitutional** power cannot be realised de iure, it would require renegotiation of all the basic treaties, including the accession treaties, so that if a state did not ratify a provision, it would also de iure fall out of the alliance, which would be a disaster in functional terms, in addition to breaking up the fundamental ties.* This ***quasi-constitutive*** legislative – legal interpretative – process is evidenced by the addition of protocols to the European Convention on Human Rights (ECHR), signed in Rome, the first – and most significant – step[107] of which was the belated incorporation of these protocols into the basic treaty on 21 September 1970. The content of the Convention, in principle and in interpretation, will become extremely comprehensive over time - following[108] the institution of the acquis and, as we have seen, forming the basis of the principle of the CJEU's public, but especially private, case-law. As the historical-imperial parallel[109] shows, in such a constitutional 'stalemate' the importance of the judiciary as a supranational and supra-continental power and its constitutive activity in the sense of precedent law will be extremely enhanced and its impact will be examined in the context of juristocracy.

Coming to the supranational level of the EU, the most important point to note first is that the notion of branches of power is usually used in a divisive sense: in relation to the thesis of the *separation of powers.* It is well known, however, that the domestic and foreign literature strongly rejects the supra-continental division of powers, while at the EU level the issue is much more controversial, although the balance is clearly tipped in the direction of not talking about the division of powers in the Integration either. This theory is also confirmed in the very beginning of Béla Pokol's monograph[110] on supranational power sharing, so we start from the assumption that in the case of the supranational and supra-continental branches (institutions) of power we are examining, we cannot speak of power[111] sharing in the classical sense, but only of some level of power *sharing*[112]. So the question arises, which hopefully

---

[107] European Convention on Human Rights; Protocols 1.o).

[108] The "acquis" here refers to the indissoluble layering of law. So do institutional "spill over" effects. (POKOL)

[109] See the reflections in this work on the increased need for judgment in the Holy Roman Empire (p. 6).

[110] POKOL, Béla. Democracy, power-sharing and the capacity of the state to act. *Twenty years of freedom in Central Europe. Democracy, Politics, Law*, 2011, vol. 20, p. 453-455.

[111] This formulation presupposes a preemptive, active, sharing attitude.

[112] (CSERVÁK, 2015.) Op cit.

also provides some space for this work, what are the principles of the distribution of power[113]?

In my opinion, the best illustration of this specific situation of the branches of power in the European Union is the ***"équilibre institutionnel"[114]*****,** the thesis of *institutional balance of* power, which first appeared[115] in the constitutional law of the French Republic, then in the judgments[116] of the CJEU, and later in the literature. However, it is nowhere to be found in the Treaties[117] in any explicit form. In French law, however, where the jurist interpretation of 'juristocracy' originates, it is so widespread that a 'droit institutionnel' has developed as a branch of law in parallel with classical constitutional law. This thesis, found in foreign literature, will therefore be explored in its aspects of interest to our investigation. Béla Pokol defines the institutional system of the European Union in terms of 5 main supranational bodies;

1. The European Commission (Commission)
2. The European Parliament (EP)
3. Council of the European Union (Council)
4. The European Court of Justice (CJEU)
5. The European Central Bank (ECB)

In his extraordinary work, the polyhistor very purposefully summarises[118] the legal legitimacy of the branches of power, their functional "balance" and their system of sanctions and norms against the member states, so I won't delve into these issues in this work and will start from

---

[113] *That is, where does the* ***physical, material*** *transfer of power take place?* (TÓTH, Consultation. 2020).

[114] LE BOT, F. Le principe de l'équilibre institutionnel en droit de l'Union européenne. Droit. Université Paris 2 Panthéon-Assas, 2012.

[115] GUILLERMIN G. Le principe de l'équilibre institutionnel dans la jurisprudence de la Cour de justice des Communautés européennes, Journal du droit international, 1992, p. 319

[116] CJCE, 13 juin 1958, Meroni, aff. 9/56, Rec. p. 11. 4 , CJCE, 17 décembre 1970, Köster, aff. 25/70, Rec. p. 1161. 5 , CJCE, 29 octobre 1980, Roquette Frères c. Conseil, aff. 138/79, Rec. p. 3333 ; CJCE, 29 octobre 1980, Maïzena c. Conseil, aff. 139/79, Rec. p. 3393. 6 ,CJCE, 22 may 1990, Parlement c. Conseil, aff. C-70/88, Rec. p. I-2041. 7 , CJCE, 6 May 2008, Parlement c. Conseil, aff. C-133/06, Rec. p. I-3189

[117] Treaties means the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

[118] highlighting in particular the abolition of the EP's co-decision function and the introduction of majority voting (POKOL, 2018) Op. cit.

them as a basic thesis. He does not himself examine the additional functional role of the ECB as an institution, nor the secondary branches of power (institutions) that are widely considered by the EU - and French jurisprudence - to be subject to institutional balance;

a) Council of Europe
b) European Court of Auditors
c) European External Action Service
d) European Economic and Social Committee
e) European Committee of the Regions
f) European Investment Bank
g) European Ombudsman
h) European Data Protection Supervisor
i) European Data Protection Board

Although they are of little relevance to the justification of the polyhistor's theory of juristocracy, they occupy a primordial place as institutions of the European Union, in the system of institutional balance - and in its functional implementation, as we shall see in the last chapter. This requires an understanding of the theory of the distribution of power that legitimises the dynamics of power relations between these institutions and the Member States; the **institutional balance** that involves not only supranational institutions but also, by virtue of the way the EU is structured, the institutions of the Member States[119].

Fabien Le Bot states at the very beginning of his work, in the summary, with astonishing precision and a good deal of legal-historical-comparative elements;

[119] The Constitutional Court of Hungary being an "EU constitutional court" with negative legislative powers, and all domestic institutions including the executive and the judiciary applying the primacy of Community law, are thus part of a system of institutional balance. With the exception of the functioning of representative bodies with referral powers (e.g. the National Council) and individual decisions of representative bodies and authorities with decision-making powers which fall under the (democratically elected) executive branch.

*"Its **organic** and **substantive scope and the definition of its functions in iurisprudentia make it possible** to see in it a **general principle of law** applicable to all the institutions and bodies of the Union which **have decision-making powers.**"*[120]

The præsumptio raised at the beginning of the subsection will help us in this case to assume that what if an "ethical formation" were to be created by the transfer of powers? If we go back to Blutman's widely accepted modern abstractions of sovereignty[121], we can safely assume that sovereignty in the *context we are considering is* presumably quantitative in nature. That is, if sovereignty *appears on one side by means of a 'sovereignty transfer', it must necessarily disappear on the other side*. This is in line with Blutman's view that the latter *can be* '*emptied out*'. The fact that we are talking about sovereignty transfer at all – and here we are also referring to the international literature and public discourse – implies in our interpretation that, correlated with the transfer of powers, there is indeed a (in some way, degree and place) division of national and supranational power. A power which today bears the democratic label and which implies that it must also be legitimised (by the people) in Bodin's classical way. Otherwise, it would run counter to the objectives of the Union*, including the teleologised principled standards of 'globalisation'*[122]. This explains why the EU, despite its supra-continental decision-making powers and other clear sovereignty deposits, is so careful to conceal its *state* nature. The answer is obvious: *because it would have to legitimise **its decisions**[123] **in the** same way*; it would have to have the classical institutional system of the branches of power, as well as ensuring their ***rigid*** separation and proportional[124] representation (democratic legitimacy).

---

120 Quoted verbatim from (LE BOT, 2012) i.m. It may provide the ground for a whole range of later investigations that he allows for an equilibrium form of power sharing, in the EU, in 3 test environments: **organic**, **material** and **decision**, two of which are clearly physically manifested, but through which the third is also materialised! The reason why we do not mention here the jurisprudential representation is because, according to Le Bot, it is also only the testing environment of the "mixing" of these 3 branches.

121 (BLUTMAN, 2015) Op cit.

122 (CSERVÁK, 2010) Op cit.

123 This is illustrated by the reflections on the international environment of the "pacta sunt servanda" principle and the "spill-over" phenomenon mentioned by Béla Pokol. (POKOL, 2018.) Op cit.

124CSERVÁK, Csaba. *Governmental and electoral system (or the complex system of democratic power in international perspective)*. 2010. Thèse de doctorat. SZTE.; **factors strengthening and weakening the system**.

The much studied phenomenon of democratic deficit is, in my opinion, also worth approaching from the perspective of institutional balance. The framework disposition which the Court of Justice, in a [125]masterly exercise of teleological reductionism, applied as early as 1958 in the Meroni case, in which the public law status of a private law case was sought to prevent the emergence of the EEC as a private law entity, is the principle of institutional balance, adopted[126] - *wrongly* - from French law. The wording of the judgment (8-11) does seem to answer somewhat the 'eternal' question posed at the beginning of this sub-chapter, namely that the EU; ***"If the State so decides, if it so decides not."*** This hypothesis can undoubtedly only be interpreted in the light of Béla Pokol's theory of juristocracy, in which the judgments of the Courts are not the "centre" of national interests in the Delorsian sense, but appear as another forum for the expression of interests and wills, whether global or individual. Provided, that is, that, as a result of the fusion of the remaining branches of power and the loss of popular representation, the decisions[127] of the supranational executive (then the Haute Autorité) are not democratically legitimate. The latter, in my opinion, can be better illustrated by a reverse logic approach;

a) The (hypothetical) EU state makes functional **decisions that *are reflected*[128] *in physical space***, so they must be legitimated proportionally by the people, otherwise a democratic vacuum (deficit) is created.

b) *Due to the lack of real (physical) popular representation of its* institutional *decisions,* the EU "fills" the ever-lasting [129]social need for a rigid division of power at the level of the member states.

---

[125] (TÓTH, 2015.) Op cit.

[126] It is worth pointing out that the (non)separation of powers thesis, which the Union prefers to use, originates from the "land and age of revolutions", the success of which period, to support the thesis, was based on the theoretical and practical possibility of the overthrow and detachment of absolute (de facto constitutive) power (by the people)!

[127] GEORGOPOULOS T., " Doctrine de séparation des pouvoirs et intégration européenne ", in BLANQUET M. (dir.), *La prise de décision dans le système de l'Union européenne*, Bruxelles : Bruylant, coll. Droit de l'Union européenne - Colloques, 2011, p. 3.

[128] (TÓTH, 2015) i.m. ; (TÓTH, 2020. Personal consultation. KRE)

[129] In this sense; there must be a **balance between the** material choices and their immaterial legitimation.

In my view, the form of the principle of institutional balance applied by the CJEU, as stipulated by Le Bot above, seems to provide all four of the context to be examined;

1. Material
2. Organic
3. Adjudicative function
4. Decision-making institutions and bodies

The legal scholar argues that by examining these, we can now examine institutional balance ***as a general principle of law***, and thus – and bearing in mind the extraordinary support for his work – in addition to the presumption of the "statehood" of the EU, we can also try to apply to it the classical guarantees of the rule of law that are a necessary feature of the political culture of our time.

In the light of the above, it is worth considering the Commission's 2007 interpretation of the "rule of law", as presented by Judge Varga Zs. in relation to the rule of law in 2020 [130]that;

" There can be no democracy without the rule of law and respect for human rights, no rule of law without democracy and respect for human rights, and respect for human rights without democracy and the rule of law " [131]

The President of the Curia draws attention to the very important point that, according to the Commission's view, the above-mentioned triad has also, after the Second World War, significantly merged (converged), creating "a kind of mixed version", which, according to the scholar, the Commission, in its review, "considers common without any explanation". In other words, the same for everyone, which presumably also struck the former Constitutional Judge as a practicality. Starting from this positive logic that the EU is not a state, it can be observed from its own 'rule of law report' that, although it notes the merging of 'powers' and even the correlative influence of the ECtHR and the CJEU in this process, it then almost directly, in sections 37-42, practically 'pushes' and broadly extends the classical rule of law criteria to be

[130] CSINK, L. SCHANDA, B. VARGA ZS. A. The Basic Institutions of Hungarian Public Law. 2020. p. 376.

[131] The citation of the statute indicates the systemic concern of the now President of the Curia as the "embodiment" of the judicial branch.

applied to the Member States, along the three principles[132] of their interpretation of the rule of law.[133] A comparative legal-historical analysis of the form of institutional balance in the French legal system is an attempt to answer Professor Varga's question in parentheses[134]; ***'common'*** as the basis of the system of institutional balance ***does not require explanation*** because of its *general legal principle nature*. For the latter is the équilibre institutionnel taken from French law, a general principle of law with a function of separation of powers in *this context*, *based on a legitimation technique that masterfully combines the* [135]*principle of* ***"common interest"*** *and interests*, which, however, is not based on the classical separation of powers, but on an "imbalance of equilibrium", the near-perfect functioning of which in its organic, historical context is based – even according to its most knowledgeable – on the possibility of abolishing the entire system of equilibrium at any time (revolution). The greatness and foresight of Le Bot, in the light of his work, is all the more evident from the quotation he places at the beginning;

"What is the equilibrium of an organism in motion if not an eternal struggle to restore the play of opposing forces, all in the interests of an arrangement that is the more beautiful the more unstable it is. "[136]

In the sense of the line of thought presented in the sub-chapter, the phenomenon of democratic deficit - which is *very real* -[137] can therefore be traced back to two factors;

a) The ***absence of an effective constitutive branch of power***.

b) A fusion of the two remaining powers; a "democratic vacuum" created by the "illegitimate" decisions of the *quasi-constitutional power,* which it leaves to the Member States to fill with incapacitated jurisdictions.[138]

---

[132]VARGA ZS. "Rule of Law", "Etat de Droit". Op cit.

[133] In which, according to the professor, the representation of the rule of law in 3 languages (i.e. 3 different national legal contexts) also raises concerns.

[134] CSINK, L. SCHANDA, B. VARGA ZS. A. The Basic Institutions of Hungarian Public Law. 2020. p. 376.

[135] (LE BOT, 2012) "Intêrét général" - in our interpretation (principle-interest) - ;is the basic tenet of institutional *equilibrium.*

[136] DUHAMEL, G. Défense des lettres. Quoted in (LE BOT, 2012) p.5 (NURAY, 2020)

[137]MORAVCSIK, A. Le mythe du déficit démocratique européen, *Raisons politiques*, 2003, no 2, p. 87-105.

[138] This hypothesis will be tested in the next subsection.

Fusion of powers: juristocracy or "jurocracy"[139] ?

It is important to make it clear that, despite the catchy subtitle, we take juristocracy as the widely disseminated, well-known, reflected[140] and accepted theory of Béla Pokol as a basic thesis, and in *no way intend to refute it.* Instead, we will try to apply it to the taxonomic reflection of Le Bot, which was born at almost the same time as the above-mentioned, with the claim of completeness thus fulfilled.

"To prevent tyranny, it is not necessary to rigidly separate all centres of power, but to prevent the uncontrolled exercise of public power – István Bibó 1947."[141]

In my consultations, my professors all cautioned me against using new terms, and I have not dared to use the term **"centres of power"** throughout this work to refer to the branches of power – even though it seems more appropriate in the context we are examining – but it appears in the words of one of the greatest jurists in history, which I have encountered in the course of writing this chapter, so this is the definition we will use from now on. Lóránt Csink speaks of a complex division of power when we look not only at the three classical (Montesquieuian) branches of power, but at all the possible centres that exercise power. ***Bibó also includes the economic centres of power*** which are of great interest to us. If we look back at the list on page 23, we can see that there are *many more than* the *5 bodies counted by Béla Pokol in this list; there are* ***14 centres of power in*** *total, and* ***we can***[142] ***also include the national and private (NGO) bodies***. This is also supported by the principle of institutional balance, which we can now discuss with little knowledge of the distribution of powers. In this sense, the 'system of checks and balances' is perhaps the best way of demonstrating the system of institutional equilibrium, which, according to Csink's interpretation, also involves **'counterweights'**, because only they can ensure equilibrium by counterbalancing the

---

[139] Here we present the Weberian "bureaucratic" aspect of the rule of law, which is presumably used by Béla Pokol in a similar context.

[140] PRUGBERGER, T. Review of Legal Theory No. 2 (2019.) p.45-53.

[141] **CSINK, L. SCHANDA, B. VARGA ZS, A. Basic Institutions of Hungarian Public Law; pp. 339-443 (2020) (!).**

[142] The list can be extended to all institutions and bodies where political, legal, economic or media, even social media (CSERVÁK. 2015) activities are carried out and affect more than 2 citizens. (Virtually infinite!)

opposing centres of power. Cservák's theory seems to be confirmed here, because he too accepts the above conceptual framework only in this context. In order to understand these concepts in the 'naked' context we are examining, it is necessary to go back to the intellectual predecessor of Locke and Montesquieu, Benedictus Spinoza[143], who, in his political study, formulates them as follows;

*"He who thinks that the **multitude or the man who is concerned with affairs of state**[144] can be induced to live only according to the dictates of reason, dreams of the golden age of poets, or of a fairy tale (...) The public affairs of the state must be so arranged that their managers, whether guided by **reason** or by **temper,** may not be in a position to be unscrupulous or to act wrongly."*

Gábor Pap is probably correct in noting that while Spinoza examined the functions - and origins - of power, his epoch-making successors[145] departed somewhat from this approach. In our understanding, this shows that Spinoza was the last great thinker to account for power as "a power". According to Pap, it was in this spirit that **Locke's** theory of **"power set limits to power"** was born, which I think is *misinterpreted today*. In the above and the (semantic) sense of the quote, Locke in this statute is not necessarily referring to the branches of government (as power), but to the people themselves. That is why he contrasts "liberty" with "tyranny". The academic from Miskolc examines three of Bibó's statutes, of which the first is perhaps the most important for us, and which Pap confirms 73 years later, in 2020;

*"The historical and political situation out of which this principle could grow was realised in England in the second, cautious, glorious revolution which finally ended the Stuart reign and secured the supremacy of parliament over royal power, without, **like the first revolution, imposing a new tyrannical power,** but establishing a certain **state of equilibrium.** This balance between king, parliament and, within it, upper and lower houses, was ultimately a*

---

143 Citation from PAP, G. Miskolc Law Review Vol. 15 No. 1 Special Issue No. (2020) p.215-221

144 In support of our theory; on the question of the distribution of power, the "father" of power theory Spinoza does not distinguish between the binary dynamics of the thinking of the whole people (the multitude) and the thinking of the leadership of the state (the man who deals with the affairs of state). In an expansive interpretation of his words, he derives power from these.

145 PAP, G. here means Locke and Montesquieu, but after them this dual approach became characteristic, Spinoza's doctrines were interrupted by the "libertarian idea" of revolution and the decomposition of the concept of power into "liberty" and "tyranny", in Montesquieu it becomes three, which the French jurist imagines with equal weight.

***modernised form of the balance that had existed between the monarchy and the various orders throughout Europe throughout the Middle Ages**. (...) Locke is the foremost publicist of this political-ideological constellation.* "[146]

Gábor Pap examines Bibó's two other statutes, but only confirms the first. He labels the other two "errors", which seems extremely grotesque in the light of the timelessness of the present work and Bibó's life, oeuvre and achievements;

1. Bibó is presumably right not to distinguish between the ideas of *Aristotle* and Locke, the latter of whom sees equality before the law and judiciary as a means of overcoming "tyranny", both philosophers contrasting the "multitude"[147] and the minority of state power, that is, power organised from above, with power organised from below. This is illustrated by the polarity of the triangles on page 29. Bibó was presumably trying to illustrate – and this is also what gives rise to the academic's juxtaposition – that judicial 'power' is the application of laws that enforce the interests of all people. If they are well constructed, there is no need for value judgments, and indeed, the prohibition of them is thus merely a juxtaposition of the legislature (as an absolute legal power) and the people. So there is only moral (majority) and immoral (individual) interest. There is no in-between.

2. Pap's second objection is related to the first, that Bibó, presumably in opposition to Montesquieu, singles out the judiciary from the division of powers, justifying Locke. He distinguishes between the legislative and the executive as 'the fundamental opposites which intersect all the functions of government in the world'[148]. In Pap's interpretation, this assumes that since it is a branch of the state's functioning (the judiciary), Bibó erroneously does not delineate it between the branches of power. However, the greatest Hungarian scholar demonstrates a vast knowledge by looking at the fundamental interests, in which, like Aristotle and Spinoza, he contrasts the interests of the leading minority and the majority of the people. In this approach, it is

---

146 On this point, Bibó explicitly confirms the validity and legitimacy of our comparative legal-historical investigation of the question of the division of power and the methodology we have defined to arrive at them.

147 See Spinoza, p. 32 Op. cit..

148 (PAP, G. 2020.) p. 219.

in fact in the interest of the state to administer justice impartially, because it interprets dynamic principles (law) legitimated by the people (regularly revised by the ‘constituent' or ‘constitutive’ power).

Thus, according to Bibó's reasoning, if the legislation of power adequately and dynamically (full shifting possibility) reflects the “common"[149] interest of society, then the judicial power is only a means to enforce the law. – Accordingly – and in reading the hereby work - we can presumably respond to Gábor Pap's objection that Bibó and other authors do not examine Locke's dual division of power; they do not do so because in that dimension[150] *it was self-evident that law serves the interests of society.* Bibó's concern[151] about the illegitimacy of the National Assembly's legislation (constitution-making) shows this; he is most concerned about the *provisionality of the* Hungarian representation of the people, and he prefers to focus on the practical side of the representation of the people - that "if a previous system of government fails, the representation of the people will meet" - rather than on a series of new institutions[152] that he believes are not understood in Hungarian politics. The legal scholar cannot imagine how the power of the people – which he compares to the Russian (people's) army, who do not go to battle out of a sense of duty as citizens, but to defend themselves and their families – can be indirectly represented by a single body. In this reading, it becomes clear that he was the last Hungarian jurist who, with full knowledge of Werbőczy's Tripartitum, and drawing on Hungarian custom law and Aristotle, saw **true democracy** emerge from blood and sweat[153].

If we take Bibó's natural law approach, then, if the decisions of the government do not adequately represent the "centre" of the interests of the whole people, the balance is upset, a democraticdeficit[154] is created. The fact that we talk about democratic deficit – or Euro-scepticism – in the colloquial context of the EU at all supports this theory. However, Béla

---

[149] In this context, the concept is crystal clear in the "Common Interest" principle of institutional balance.

[150] In the "state of equilibrium" following the revolutions and then the world wars all resulting in baby-booms.

[151] BIBÓ, I. Selected studies. vol. 2. 1945-1949. 5-11. o.

[152] Bibó is referring here to the various representative assemblies, including the Constituent Assembly.

[153] SIPOS, J. Agrarian revolution in 1945. Imre Nagy, the Minister of Land Distribution, MEMORIES 1: (1-2) pp. 43-51.

[154] Henceforth, and retrospectively, we interpret the concept in its mathematical - exact - sense.

Pokol's theory of juristocracy also provides an answer to why this is the case; the polyhistor calls the phenomenon the 'Commission - Court of Justice tandem', and in his unusual work couples it with the notion of 'diffuse mass loyalty', which as a 'substitute for real legitimacy' merely 'creates a lower order of satisfaction and acceptance'[155]. According to the balance-sheet[156] principle, if the balance is even slightly upset, the supranational system becomes polarised and its decisions illegitimate. From this logic, and from Pokol's theory of 'input vs. output legitimacy', our earlier claim that the state seeks to meet the real need for popular representation at the level of national democracy seems justified. The dimensions of the democratic deficit described above are further nuanced by the turnout rates in EP elections[157], which show a downward trend in both Western and Eastern states, but, to take an example, the Belgian turnout figures are several times higher than the Hungarian figures; this also means that the interests of the (average) Belgian citizen are undoubtedly much better represented than in the Eastern half of Europe. In our interpretation, this also leads to an imbalance in another dimension[158]. The term 'jurocracy' is therefore used here to mean only that the Pokolian thesis is being realised;

"A whole system of law and institutions is slowly[159] turning against the People."

[155] POKOL, 2018. p. 171.

[156] CSINK. 2020. Op. cit.

[157] MUXEL, A. 2007, p. 43-55. Op cit.

[158] In the metaphysical sense of the term. (ARISTOTLE, Metaphysics, Book 7, esp. 1037a5, Op cit.)

[159] This process is perhaps best illustrated by the analogy of the "slowly boiling frog", which, not sensing the change in temperature, does not jump out of the boiling water that is killing it.

SYNTHESIS

In the case of the German-Roman Empire, we have seen that, in their institutions, their structure and their relationship to each other, they show parallels with the institutions of Integration, but the very marked difference is in the executive: The millennial existence of the Empire was presumably *ensured by the concentration of the* exegetical *and constitutive powers (to a certain extent) in one hand, by its independence from principles, its unquestionability and continuity, and thus by* ***the balance between continuity and discontinuity.*** With the Enlightenment's individual-centred theory of power, this balance was upset by the questionability of executive power. Furthermore, this branch of power lost its real constitutive (discontinuous) role in the process described above; before the world wars, this system could be effectively replaced by the people. Hitler criminalised this feature and the supranational spread of the German model of constitutionalism with real constitutive power. In parallel with the loss of legitimacy of the executive branch and the indefeasibility of the theoretical centres (democratic deficit), we can observe a deterioration of the functional, responsive capacity at the level of states and supranational organisations, due to the imbalance between the factors that strengthen and weaken the democratic system. While the Empire, despite the means of the age, was able to maintain the material exercise of its supranational interests much more effectively with a looser bond. The emergence of the principle of popular representation in the legitimation of the executive, coupled with the unassailability of the power of principle (legal principles), even in the age of digitalisation, has severely limited this quality, resulting in a democratic deficit. If, in the sense of the latter we juxtapose the elements of legitimacy of principled and functional power with the strengthening and weakening factors of the balance of power, we can, in my view, infer these cautious assumptions from a comparative interpretation of the theory of 'institutional balance' in terms of legal history and taxonomy;

A. At the level of Integration, this balance could be represented in the *long run by* a real (absolute) constitutive supranational power, in which the "European Sovereign Common Interest" could be realised through its real (popular) legitimation and its (proportional) detachability (reciprocal legitimation). According to István Bibó’s vast doctrines, this balance could be represented by a bicameral parliament elected

proportionally by the people and a president[160] delegated in two or three stages from and by them, thus the people. This is feasible in today's digitalised landscape.

B. In the current system of integration, the principle of institutional balance would mean that national interests would be safeguarded in *the short term by* an executive and its organs independent of international interests. A premise in which the People, and with it the full range of individual rights, increasingly with digitalisation, is seen as a foundation of state sovereignty.

In the sense of the title, and according to the logic of this work, a strong executive and its organs acting in the national interest, their practical and institutional independence, constitute the "national interest's stronghold" in the European integration. Looking outwards, however, it can be observed that the reciprocal legitimacy between the centres of power (including the people), and thus their lack of real popular representation, results in the democratic deficit that the EU compensates by different (interest-based) means. This should be ensured by the institutional balance, which has never been in balance since its revolutionary birth. **This presupposes that European unity can be influenced by external, economic (interest) means.** Regarding the whole paper, it can be cautiously assumed that the **'ideal system'** is the **'centre'[161] of interests and principles.** To fully substantiate this golden ratio will presumably take a lifetime's work, but having taken the first step, I have realised that it is worth it!

- The principles are not "the same" everywhere. The rights of the individual should be allowed to prevail in their own organic legal context, with proportional (democratic) representation. And when it comes to 'uniform' human rights, let us look to Africa! -

If we pass through the storm without looking ahead and without any intention of changing direction, we run straight into the obstacle with our eyes closed![162]

---

[160] In this sense, collegiality is excluded. (CSERVÁK, 2010.)

[161] EINSTEIN, A. General Relativity Theory, 1917 - Presumably even "special" relativity and Higgs can be applied *at the same time on this phenomenon.*

[162] *Si nous traversons l'orage sans regarder notre devant, ne voulant en aucun cas changer de direction; nos yeux ainsi refermés, nous courons droit dans l'obstacle!* (NURAY, 2020)

METAIURISTICA

Lóránt Csink, in his chapter on the modern separation of powers, hypothesizes that *"the content of the division of power is culturally and historically bound (...) it is not possible to establish with common sense what the duration of the division of power is".* The unrivalled public and international law scholar beautifully constructs the historical development of the division of power in his work, which is probably why he has come to some very interesting conclusions for us. Locke, the originator of the concept, distinguished between only two branches of power:

a) **Executive branch (constitutive[163]) -" discontinuity**

b) **Judicial power (non-constitutional) -" continuity**

Lóránt Csink in his interpretation[164] of Locke, brought 2x2 criteria to typify the branches of power:

c) **Normative aspect of the activity (continuity) - continuous**

d) **Activity specificity (discontinuity) - discontinuous**

The Hungarian legal scholar also considers it noteworthy that Locke also considered a "branch of power" of a natural law nature, which is inherent in every human being, possessed before birth and which he can enforce (**by his or her decision**) if necessary. Thus **Locke accounted for power in both its material and immaterial forms, in addition to defining its smallest mathematical unit; the human being[165].**

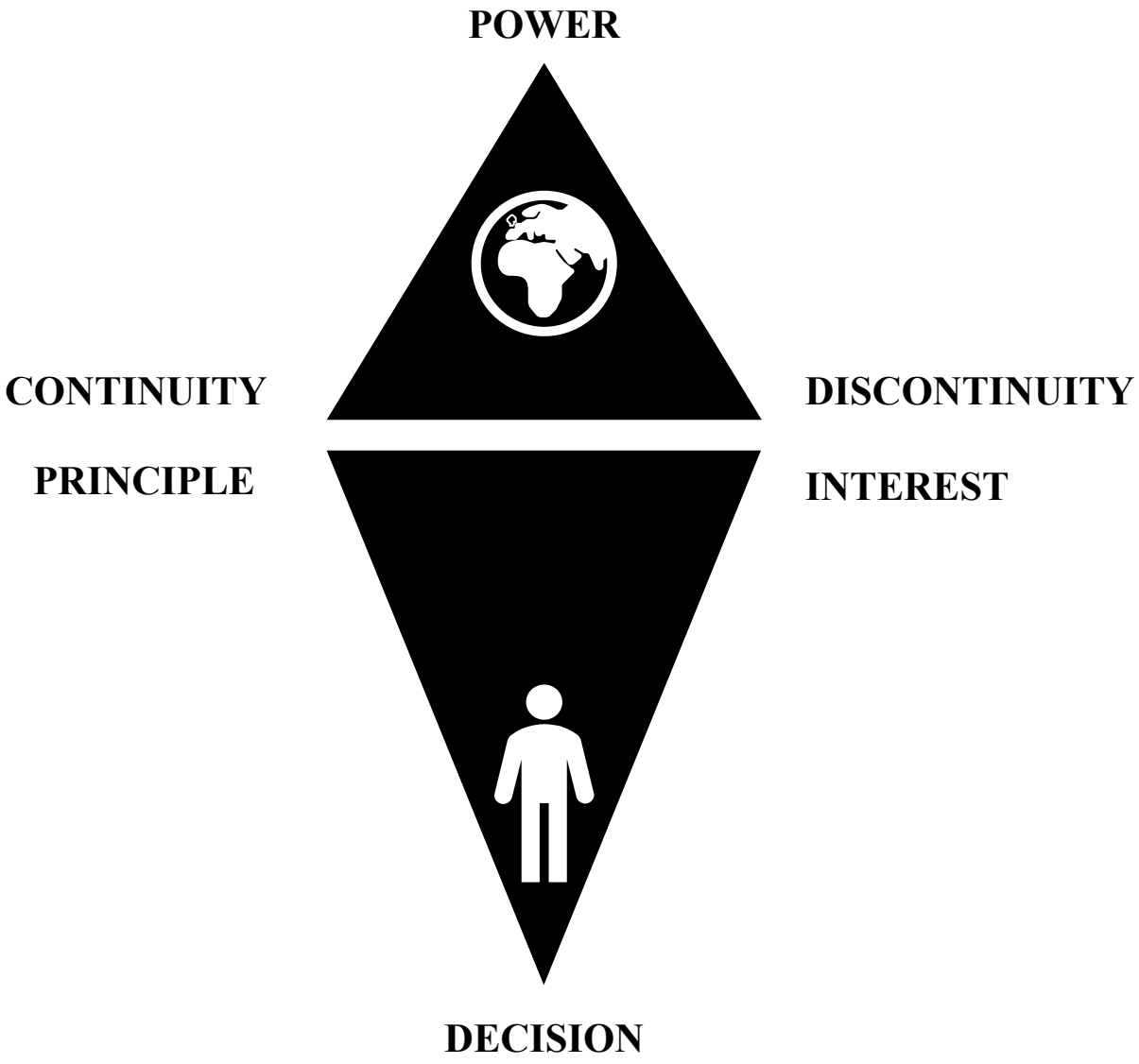
---

163 The conceptual definition of "constitutive" here is extended from its previous use to include the possibility of overturning theoretical bases.

[164]CSINK, L. 2020. Op cit.

165 Very importantly, Locke does not depict an abstract set (the people), but presumably recognises that the latter is a collective term for the sum of human **choices.**

On this basis, we can try to draw two triangles[166] using the terminology used above;



The above figure can be applied without further explanation to the classic party division, right and left - or vice versa - with power as an abstract concept at the top and the voters at the bottom. However, there are many 'in-between' political directions, some continuative (traditional), others discontinuing (innovating) but more likely 'alternating' between them. Therefore, the division between 'democrat' and 'republican' seems more appropriate in a multi-party structure, which, although not terminologically, but functionally illustrate the

[166] CSERVÁK. CS. During our consultation, he drew a triangle depicting left-right, with liberalism as a dynamic power at the apex, which inspired the rhombus above. (Budapest, 2020.)

polarity of the status quo (continuity) and the need for reform (discontinuity). If this balance is upset, the people's demand (interest) changes, and so does the people's representative power (public opinion), through the assertion of its decision, that influences the discontinuous change in the rule of law, which in a federal system also means the constitutional power. This implies that the party in power will be the one that is better able to express the interests of the people as a 'decision making group' (concentrated) through political [167]means. Hence, as soon as a new party comes to power, it will represent continuity, regardless of its political values. This also means that if **interests demand it** - and *only then,* because of the [168]effectiveness of the proportional representation electoral system - the continuity **will change dynamically.** However, these also seem to outline that **choice** as 'material power' is not present at one level in the system, but can be detected at an almost infinite level at a time. According to Locke's theory above - thought to be outdated - power is manifested in multiple planes of time and space, and is therefore multidimensional. Accordingly, we can assume that while interest is present in one dimension (continuity), discontinuity is represented dynamically (i.e. in 2 dimensions) by principle and time. While these seem to be "connected" by power, which is itself 3-dimensional, and thus in this legal sense "infinite" in number, as is shown by its material-immaterial duality.

This is probably best illustrated by ;

Time is a **known variable**, we know that it passes and will pass, as does the human nature fondament (**interest[169]**), which *presumably* does not change with time.

The **principle[170]** is a **dynamic variable** because it changes over time (and with technological progress), but we do not know in advance what necessary changes in the **principle** (legal) structure will be required to maintain the “balance".

---

[167] Here we think of politics as an "exact" science.

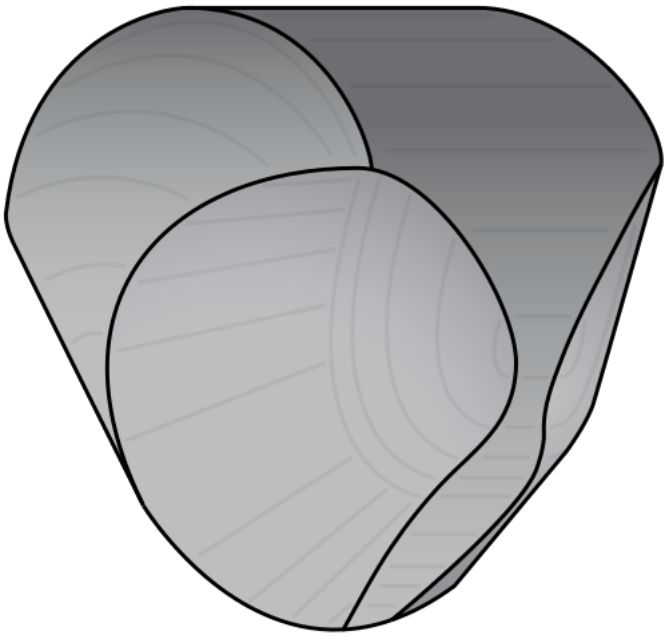
[168] (CSERVÁK, 2010); Op cit. On the factors that strengthen and weaken the democratic system.

[169] Latin: "rem".

[170] Latin: "principe".

Power[171] is a **quantum variable**[172], infinite in number, which is exacerbated by the fact, mentioned in the previous sub-chapter, that states in supra-continental organisations also make **decisions** that affect the whole, but also their own citizens at the same time. In this (sociometric) sense, the behaviour of individuals in communities mirrors the behaviour of states in supranational organisations. This broadens the scope of the analysis and allows the concept of power to be applied to the whole world 'both simultaneously and separately'.

This means that we must conclude that the "triangles" are incorrect, and in fact the following shape best represents the system described above, which is impossible to annotate;



173

---

[171] Latin: "imperium".

[172] This is supported by the reasoning in Spinoza's Ethics that **substance is indivisible** - in Aristotle's interpretation (which is thought to have been Spinoza's basis), "**the notion of two and double are not identical**". (Metaphysics, p. 51) - The natural law approach of the two philosophers supports this theory that the 'one' is also infinite. This is the starting point of Locke's approach and then of István Bibó's who, in a very pragmatic way, derived this power not from the institutional system but from the people and did not distinguish between 'levels of power' but only recognised it as the people. *Bibó's use of the* concept of "centres of power", *which semantically denotes not the separation but the concentration of power (as an abstract concept), is also* indicative of this.

173 DOMOKOS, G. VÁRKONYI, P. “Gömböc" figure, 2007.

Based on the above mentioned, we can also try to put the concepts (with their Latin equivalents abbreviated) into a mathematical equation:

$$I^3 = rp^2$$

To understand this equation, Aristotle will help us. One of the founding fathers of our legal system, Aristotle contrasts the pleasure (interest) with the necessities of life (principle)[174], which later narrows down to the pair of principle and reason in his investigations[175] into the theory of science. According to him, knowledge as a principle is based on perception (experience), from which we can draw principled conclusions. According to the philosopher, the principle balances the interest, so that whoever keeps his principles in mind also has them in[176] his interest. According to Aristotle, "Sciences that start from fewer principles (...) are more definite than those that suffer other extensions"[177] and he also states that principles limit perception, which in his interpretation implies that if a science becomes "over-limited" by principles, its control can be taken over by reasons (interests). Aristotle was an advocate of 'motion'. He understood this to apply to everything, including[178] science, no doubt correctly. In his work, he focuses on matter (stationary) and motion, and considers views that only examine matter in static terms to be outdated. He does, however, largely accept Empedocles' [179]theory and explains that the philosopher ***sought the cause of motion in two opposing principles.***

The *clearest evidence, however, for the possibility of applying quantum mechanics to social science* is Spinoza's statute from the 17th century, a time when people were still burning innocent women on the grounds of witchcraft - presumably why modern science attaches little importance to the true semantic content of terms -;

---

[174] ARISTOTLE, Metaphysics. 384 BC-322 BC 1992 16-39.p. ; 39-47.p. (!)

[175] Which, since childhood, have been a fundamental tenet of my life, a logical statement from a bygone age.

[176] Although Aristotle thought in polar terms, it is likely that a balance of these was achieved.

[177] (ARISTOTLE, 384 BC-322 BC). p. 39.

[178] As a humble student myself, I have relied on this millennium-old finding to develop my theory.

[179] If we are forced to go back to ancient Greek philosophy, we observe that the theory of power with Montesquieu moves away from the natural law (logical) approach and "contrasts attributes with attributes and modes". (SPINOZA. 1665.) i.m.

"Every particular thing, that is, every thing whose existence is finite and bounded, exists and can be determined to function only if it is determined to exist and to function by some other cause whose existence is also finite and bounded; this cause can exist and can be determined to function only if it is determined to exist and to function by some other cause whose existence is also finite and bounded, and so on ad infinitum."[180]

It is probably no coincidence that Aristotle and Spinoza both mention the issue of determinism in the same page as "multiple existence"; this quantum mechanical, material theory of power assumes a multivariate but deterministic system in which, according to the logic of this work, people have an infinite number of choices, but those choices are influenced by the choices of other people. This is the game[181] theory that Malvina Tema is exploring in relation to the EU. The state of the art in quantum mathematics and computer science today allows us to get extremely close to the "unknown variable". It is probably this logical approach that led one of our country's great scientists, János Neumann, to create his theory of social science. But Einstein was also a major influence. The Hungarian genius, if he had more time – or done his law degree – would probably have come to the same conclusions himself. He came closest in our country to this interdisciplinary formula, which, for reasons of the form of the student competition, I am only presenting in the form of cautious hypotheses in the 'cover' of this appendix. If we look at the events of the past as a "negative law", applying the above formula, it seems to outline that Europe had in fact worked out centuries ago the solution – the institutional equilibrium – which in its mathematised, exact form could provide humanity with the possibility, in the sense of the logic depicted above, of consciously shaping its own future. Which thus becomes infinite in Einstein's sense.

---

[180] SPINOZA. Ethics. (1665.) p. 28. These lines are one of the last manifestations of pure pantheism, which in the 17th century defined the modern concept of quantum mechanics as a teacher would explain it to a puzzled student today. (p. 45) Spinoza took this approach from the English philosopher John Toland (1670-1722), but its basis is clearly Aristotelian.

[181](NEUMANN. J. 1947.) in TEMA, M. (Basic assumptions in game theory and international relations. *International Relations Quarterly*, 2014, vol. 5, pp. 1-4), applies it to international legal relations, but does not consider them as exact mathematically expressible relations, but as abstract concepts.

It opens an array of possibilities for examination and testing in simulated environments for the following;

- Δ By examining (or computing) the continuity-discontinuity relation either historically, mathematically and comparatively, we can presumably infer and anticipate major conflicts in the future.
- Δ The decision as energy remains in the form of writing. By semantically examining such works, including the Bible, we can determine the direction of the "movement" (ARISTOTLE) – or more correctly, the ripple.
- Δ An exact, mathematical system of delegation and elections – guarantee guidelines – would make it possible, albeit virtually, to establish a stable system of laws and principles to ensure the long-term survival of the "Common Interest"[182] of the entire population of the Earth, as said above.
- Δ Following the logic, by using the formula, sociometric and game theory research can be applied to all social - and international - dimensions in the same way, according to a conservative theoretic approach;

This allows the mature toolkit of social sciences to use society as an exact phenomenon and power (decision) as a mathematical or geometric value. The overall logic can be illustrated, presumably in legal terms, as follows;

AUTHORITY (decision=E)	
Institutional independence	Individual independence of judges
Continuity(c)	Discontinuity(m)
Interest	Principle
$E = mc^2$	

This theory needs the whole world to understand and unite to develop a better future.

[182] See. p. 31.