NOTES AND COMMENTS

SUPRANATIONAL FEDERALISM: A STUDY OF THE EUROPEAN UNION

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Introduction

The need for, and the nature and efficacy of, federalism as a system of governance have remained evergreen issues in comparative constitutional law. Its significance is established by one simple factor: over one billion people today live in states that are considered to be, or claim to be, federal.[1] Today, in the context of globalization, the idea of the nation-state is changing both in terms of its status in international law and its internal governance systems. In examining federalism within the framework of globalization, the process of European integration and the creation of the European Union ("EU"), which has blurred the distinction between an international organization and a federal supervisor, assume special significance. This paper critically reviews the process of formation of the EU in light of generally accepted principles of federalism. In the following section, the process of the formation of the EU and its current position are discussed. The next two sections test the structure of the EU against the fundamental principles of federalism. The paper concludes that the EU cannot be called a federation in the generally understood sense, but that, nevertheless, there are valuable lessons to be learnt from the process of European integration.

The Process of European Integration

Early Stages

One of the necessary prerequisites for European integration to take place must have been a desire and a capacity of the Member States of the EU to unite and yet retain independent control in certain areas.[2] The factors that prompted this were the economics of integration. Following World War II, Germany, France, Italy, the Netherlands, Belgium, and Luxembourg began laying the framework for a European polity with the establishment of the European Coal and Steel Community (1951), the European Atomic Energy Community, and the European Economic Community (both in 1957).[3] In the decades that followed, the Member States transferred increasing elements of their sovereignty to the European institutions. Austria, Denmark, Finland, Greece, Ireland, Portugal, Spain, Sweden, and the United

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1 The list includes Canada, the United States, and Mexico in North America; Brazil, Venezuela, and Argentina in South America; Austria, Belgium, Germany, Switzerland, and Russia in Europe; Australia, India and Malaysia in Asia; and Nigeria in Africa. For an analysis of the development of the federal idea in different parts of the world, *see* Ronald L. Watts, *Federalism in the Post Cold-War Era: The Contemporary Relevance of the Federal Idea*, ST. LOUIS – WARSAW TRANSATLANTIC L. J. 109, 110-119 (1995).

2 This fact is evident from the current structure of the EU, as will be demonstrated during the course of this paper. While integration, as far as economic matters are concerned, is at a fairly advanced stage, in respect of political matters, there is still a reluctance to move towards any integration.

3 Dieter Kugelmann, *The Maastricht Treaty and the Design of a European Federal State*, 8 TEMP. INT'L & COMP. L. J. 335, 337 (1994); Mark K. Brewer, *The European Union and Legitimacy: Time for a European Constitution*, 34 CORNELL INT'L L. J. 555, 558 (2001).

Kingdom all joined the evolving European order. The vision of the process that started in 1951 was to move progressively through the steps of establishing a common market and approximating economic policies through tighter economic integration, and economic and monetary union, resulting finally, in full political union, in some version of a United States of Europe.[4]

Maastricht

The aim of establishing a common market and a monetary union found their culmination in the Single European Act, 1986 ("SEA"), and the Maastricht Treaty Establishing the European Community, 1992.[5] The idea of the single market was presented in the 1985 EC White Paper (a background to the SEA) as an ideologically neutral programme around which the entire European polity would coalesce in order to achieve the goals of European Integration.[6] The aim was to create an area without internal frontiers in which the free movement of goods, persons, services, and capital was ensured. To realize this goal, European leaders committed themselves to addressing issues that were never successfully tackled in a constitutional forum, such as the comprehensive liberalization of trade in services and the removal of domestic regulations that acted as non-tariff barriers.[7] This was coupled with procedural reforms to streamline decision-making in the governing body of the European Community ("EC"), the Council of Ministers, by expanding the use of qualified majority voting, on matters pertaining to internal markets. Maastricht took economic integration a step further by providing a common central bank and a single currency, the European Currency Unit, thus creating the European Monetary Union ("EMU").[8]

The EU Structure Today

The European Union is built on an institutional system that is the only one of its kind in the world. There are four bodies in the EU that are relevant to this paper: the European Parliament, the Council of the European Union, the European Commission, and the European Court of Justice.[9] The Council is the

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[4] J.H.H. WEILER, THE CONSTITUTION OF EUROPE – DO THE NEW CLOTHES HAVE AN EMPEROR? 91 (1999). Admittedly, the use of the word "vision" is misleading in so far as it brings to mind an image of individual citizens of the member States of the EU actually desiring such a union. In fact, the formative years of the EU were extremely undemocratic – a criticism that has been extended to its current functioning as well. *See* Sean Monaghan, *European Union Legal Personality Disorder: The Union's Legal Nature Through the Prism of the German Federal Constitutional Court's* Maastricht *Decision*, 12 EMORY INT'L L. REV. 1443, 1468 (1998). For a contrary view on the EU's current functioning style, *see* Herbert Schambeck, *Federalism in the Post-Cold War Era: The Regional Dimension Within the European Union: Prospects for Stability and Peace*, ST. LOUIS – WARSAW TRANSATLANTIC L. J. 149 (1995). *See generally* Rainer Arnold, *Federalism and European Community Law. A Study on the Mechanisms of Internal Participation in European Community Decision Making in Germany, Austria, and Belgium*, 12 TULANE EUR. & CIV. L. F. 159 (1997). It would be useful to contrast the federal structure of the United States of America with the current structure of the European Union. The United States essentially consists of autonomous units with some federal obligations, all under one supreme political authority. This was the initial idea behind European integration as well. However, the lack of any desire for the acceptance of a common political authority among Member States, and in some cases, any further steps whatsoever towards greater union, have led to the stalemate that exists today.

[5] This is the single most important document in the context of European integration. In this paper, it is referred to as the "Maastricht Treaty", "Maastricht", the "E.C. Treaty", or simply the "Treaty"

[6] WEILER, *supra* note 4, at 88.

[7] Andrew Moravcsik, *Negotiating the SEA: National Interest and Conventional Statecraft in the European Community*, 45(1) INT'L ORG. 19, 20 (1991).

[8] Wayne Sandholtz, *Choosing Union: Monetary Politics and Maastricht*, 47(1) INT'L ORG. 1 (1993).

[9] There is one other body, the Court of Auditors, which is not relevant for this paper. Besides these five bodies, the EU has certain other important organizations: the Economic and Social Committee and the Committee of the Regions (advisory bodies which help to ensure that the positions of the EU's various economic and social categories and regions respectively are taken into account), the European Ombudsman (dealing with complaints from citizens concerning misadministration at the European level), the European Investment Bank (EU financial institution) and the European Central Bank (responsible for monetary policy in Europe).

most powerful body in the EU. All Member States are represented through their governments. According to the matters on the agenda, the Council meets in different compositions: foreign affairs, finance, education, telecommunications, etc. The Council has a number of key responsibilities: It is the Union's legislative body[10]; for a wide range of EU issues, it exercises that legislative power in co-decision with the European Parliament in the form of directives and regulations. It coordinates the broad economic policies of Member States. It concludes, on behalf of the EU, international agreements with one or more states or international organizations. It shares budgetary authority with the Parliament. It takes the decisions necessary for framing and implementing the common foreign and security policy. It coordinates the activities of Member States and adopts measures in the field of police and judicial cooperation in criminal matters.[11] The European Parliament is second, in order of importance. It is elected by direct elections carried out throughout the EU with all major political parties of the Member States contesting. It shares legislative and budgetary control with the Council, appoints members to the Commission and exercises a general democratic supervision over all the bodies. Compared to an ordinary Parliament, however, its role is largely titular.[12] The Commission is the EU's executive body and is responsible for implementing European legislation, budget, and programmes adopted by the Parliament and the Council. It has the right to initiate draft legislation, and represents the Union on the international stage, and negotiates international agreements, chiefly in the field of trade and cooperation.[13] The European Court of Justice ("ECJ") ensures that European Community law is uniformly interpreted and effectively applied. It has jurisdiction in disputes involving Member States, EU institutions, businesses, and individuals.[14] A Court of First Instance has been attached to it since 1989. Since the ECJ had one of the most influential roles in the federalization of Europe, its role is discussed in detail later in this paper.

Federal Aspects of the European Union

The various characterizations of the legal nature of the EU fall under three broad umbrellas. First, there are those in Europe and the United States who equate progress towards European integration with the formation of a federal state.[15] Second, some scholars emphasize the intergovernmental nature of the EU, its most relevant analogue being a treaty organization.[16] Third, many argue that the EU is a *sui generis* organization, consisting of a hybrid set of supranational relationships existing between the national and supranational levels.[17] It would be helpful to understand the reasons for the integration of Europe, before engaging in an analysis of the federal aspects of the EU.

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[10] All these powers are granted under the E.C. Treaty.

[11] Articles 202-210 of the EC Treaty spell out the powers of the Council. *See generally* David O'Keefe, *Current Issues in European Integration*, 7 PACE INT'L L. REV. 1 (1995).

[12] Articles 189-201 of the EC Treaty deal with the powers of the European Parliament.

[13] Articles 211-219 of the EC Treaty deal with the powers of the Commission.

[14] The powers and jurisdiction of the ECJ are laid down in Article 220-245 of the EC Treaty.

[15] This process has been described as the "constitutionalization" of Europe. *See* Dennis J. Edwards, *Fearing Federalism's Failure: Subsidiarity in the European Union*, 44 AM. J. COMP. L. 537 (1996); Deiter Kugumann, *The Maastricht Treaty and the Design of a European Federal State*, 8 TEMP. INT'L. & COMP. L. J. 335 (1994).

[16] Many German scholars reject the assertion that European Integration is progressing towards the establishment of a state-like entity. For example, at an annual conference of German public law professors, there was a widespread consensus that the EU lacks legal personality and that it is not becoming a federal State *cited from* Sean C. Managhan, *EU Legal Personality Disorder: The Union's Legal Nature Through the Prism of the German Federal Constitutional Court's Maastricht Decision*, 12 EMORY INT'L. L. R. 1443, 1472 (1998).

[17] STEPHEN WEATHERHILL, LAW AND INTEGRATION IN THE EUROPEAN UNION 185 (1995); Ian Ward, *Identity and Difference: The European Union and Postmodernism* in NEW LEGAL DYNAMICS OF THE EUROPEAN UNION 15 (Jo Shaw & Gillian More eds., 1995).

The Appropriate Model for Analysis

The most dominant model for studying the process of European Integration is the neo-functionalist model pioneered by Ernst Hass, in his study, *The Uniting of Europe*[18]. Neo-functionalism describes a process whereby

> *"political actors in distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new and larger centre whose institutions possess and demand jurisdiction over the pre-existing national state."*[19]

According to the theory, the key political actors in the process of European Integration exist both above and below the nation-state. Actors below include interest groups and political parties. Actors above the nation-state are supranational regional institutions. In this process, the role of governments is *"creatively responsive"*.[20] Governments may either choose to or feel constrained to yield to the pressures of converging supranational and subnational interests.[21] It will be immediately obvious that this model of neo-functionalism is inappropriate to study federalism in India (or in any other country). There were no political actors of any significance above the nation-state to be formed who influenced the creation of a federation. Thus, even before embarking upon the examination of the process of European integration, the difficulties in comparing it with any other model come to the fore.

Supranational interests

Some experts argue that the economic and political factors behind the success of the SEA and Maastricht were mainly active at the supranational level.[22] These included European institutions, for example the so-called Crocodile Group in the European Parliament, which advocated European federalism and broad expansion in the scope of EC activities, backed by procedural reforms focussing particularly on increasing the powers of the Parliament; transnational business groups, hoping to increase the competitiveness of European firms by calling for a more liberal EC market; and international political leaders, like Jacque Delors, who became the President of the European Commission in 1985 and pushed for reform in three areas – the EC decision making institutions, European monetary policy, and political and defence collaboration.[23]

National Interests of Member States

However, the predominant national economic and political interests which pushed for integration, are, perhaps, more significant than supranational interests in both the SEA and Maastricht. In the case of the SEA, as Europe's leading exporter, Germany profits directly from economic integration. Yet, in the 1980s, Germany was opposed to further monetary integration till capital flows were liberalized.[24] In France, with the ascendancy of Francois Mitterand to the presidency, in 1984, French negotiators began to support internal market liberalization and collaborated research and development ("R & D"). Although committed to using the EC to combat economic decline, the French Government remained

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[18] ERNST B. HAAS, THE UNITING OF EUROPE: POLITICAL, SOCIAL AND ECONOMIC FORCES 1950-1957 (1958).

[19] Anne Marie Burley & Walter Mattei, *Europe before the Court: A Political Theory of Legal Integration*, 47(1) INT'L ORG. 507, 514 (1993).

[20] *Id* at 517. The expression has been borrowed from REGINALD HARRISON, EUROPE IN QUESTION: THEORIES OF REGIONAL INTERNATIONAL INTEGRATION 80 (1974).

[21] *Id* at 515.

[22] *Id* at 517.

[23] WEILER, *supra* note 4 at 23.

[24] *Id* at 28.

unsure about whether monetary policy, internal market liberalization, or collaboration in R & D should be at the heart of the new initiative.[25] The most important British objection to the EC policy stemmed form the heavy British deficit under the Common Agricultural Programme ("CAP"). Britain gained little from the agricultural programmes that comprised 70% of the EC budget. At the same time, Britain was by far the largest *per capita* net contributor to the budget.[26] A series of compromises were effected under President Mitterand, like the cutting down of the British net contribution to reflect its lower per capita income. A breakthrough was achieved at the Fontainebleau summit of 1984, which prioritized liberalization of internal markets, particularly in all the services.[27] This finally culminated in the SEA.

The considerations with regard to the Treaty of Maastricht were as follows. The benefits of a monetary union with a single currency are manifold: a single currency would constitute the most credible commitment to low inflation. The price stability would lead to increased investment and would provide the basis for higher growth and employment. A single currency would eliminate exchange rate risk and the transaction costs of changing currencies in the EC market.

The reasons for the policy decisions of the various countries were several. Firstly, integration in one area, *i.e.*, a single market process, would reveal functional linkages to others. Therefore, a desire to obtain the full benefits of integration in the first area would lead to pressure for integration in the linked monetary sector.[28] Secondly, a monetary union received political support from business groups. Thirdly, France and other states wanted a greater voice in community monetary policy-making than they enjoyed in the market system, which was seen as being dominated by Germany. German support for the project was largely political and guided by its foreign policy objectives. A desire to commit to further integration was a vital way of proving that Germany would remain a loyal Community partner, especially in the context of the fears raised, following German unification.[29] An important part in this was also played by favourable public opinion about the EU, which was a vital factor throughout the integration of Europe. For instance, Irish and Danish referenda in 1972 led directly to EC membership, while the Norwegian voters chose to stay outside the Community. The 1975 British referendum resolved a long-standing debate on Britain's entry into the EC by popular voice vote. Direct elections to the European Parliament have further institutionalized the public's role by providing citizens a voice in the governing of the EC.[30]

The Constitutionalization of Europe

There is no single accepted model of federalism. However, the three essential features of any federation – existence of a federal authority and regional authorities, a written supreme constitution, and an independent judicial body[31] – are found in the EU model. The first and the third requirements are met by the existence of bodies such as the Council, the Parliament, and the European Court of Justice. As for the second, it has been argued that Maastricht created at least a nascent federal system of

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[25] *Id* at 30.
[26] *Id* at 32.
[27] *Id* at 37.
[28] *Id* at 19.
[29] *Id* at 33.
[30] Richard C. Eichenberg & Russell J. Dalton, *Europeans and the Economic Community: The Dynamics of Public Support for European Integration* 47(1) INT'L ORG. 501, 518 (1993).
[31] K.C. WHEARE, FEDERAL GOVERNMENT 14 (1963); *See also* I.D. DUCACHEK, COMPARATIVE FEDERALISM 194 (1970).

government.[32] It is in this regard that the ECJ has played an extremely influential role.[33] The main arguments to consider the EU as a federation have come from various judgments of the ECJ, which have imported several doctrines of constitutional law into European Community law. The most important factor here is that the ECJ – like any other federal apex court and unlike the International Court of Justice – has the power of judicial review. Either the Commission or an individual Member State may, in accordance with Articles 226 - 247 of the E.C. Treaty, bring an action against a Member State for failure to fulfil its obligations under the Treaty. Article 234 of the Treaty provides that when a question concerning the interpretation of the Treaty is raised before a national court, that court may suspend the national proceedings and request a preliminary ruling from the ECJ on the interpretation of the Treaty. *Prima facie*, the purpose of Article 234 is to ensure the uniform interpretation of Community law throughout the Member States. However, frequently, the factual situation in which Article 234 comes into play involves an individual litigant who pleads in a national court that a rule, measure, or national practice should not be applied because it violates the Community obligations of the Member States. In such a case, the Court provides the national judge with an answer in which questions of law and fact are sufficiently mixed so as to leave the national judge with little discretion and flexibility in making his decision. Certain important doctrines emerging from judgments of the ECJ that make the EU resemble a federation are now considered.

The cornerstone for the constitutional evolution of the doctrine of direct effect was the ECJ's judgment in the *Van Gend* case,[34] in which the question was whether Article 12 of the ECC Treaty was directly applicable within the territory of a Member State, *i.e.,* whether nationals of such a State could, on the basis of the Article, lay claim to an individual right which the courts protect. In this case, the Court declared that Community legal norms that are clear, precise, and self-sufficient must be regarded as the law of the land in the sphere of application of Community Law. Direct effect applies to all actions producing legal effects in the Community – the Treaty itself and secondary legislation. The analogy with a federal law applying directly in the regions, contrasted with treaty law that needs to be incorporated, is striking.

In *Costa,*[35] the Court held that a national law, whether adopted before or after the effective date of the Treaty, could not take precedence over Community law, and thereby evolved the doctrine of direct supremacy. The Court declared that "*the integration*" of the community's own system into the laws of each Member State, and more generally, "*the terms and spirit of the Treaty*", made it impossible for the States, as a corollary, to accord precedence to a unilateral and subsequent measure over a legal system accepted by them on the basis of reciprocity.

In the *ERTA* case,[36] the ECJ held that the grant of internal competence laid down by the Treaty must be read as implying an external treaty-making power. Community international agreements would be binding not only on the Community as such, but also, as appropriate, on and within the Member States. Furthermore, the Treaty does not contain a Bill of Rights and there is no explicit provision for judicial review of an alleged violation of human rights. Starting from the *Stauder* case,[37] the ECJ asserted

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[32] *See generally, supra* note 15.

[33] Sean Monaghan, *European Union Legal Personality Disorder: The Union's Legal Nature Through the Prism of the German Federal Constitutional Court's* Maastricht *Decision*, 12 EMORY INT'L L. REV. 1443, 1470 (1998).

[34] *NV Algemene Transport-en Expedite Onderneming Van Gend & Loos* v. *Nederlandse Administratie der Belastingen*, [1963] ECR 1.

[35] *Flaminico Costa* v. *ENEL*, [1964] ECR 585.

[36] *Commission of the European Communities* v. *Council of the European Communities*, [1971] ECR 263.

[37] *Erich Stauder* v. *City of Ulm, Sozialamt*, [1969] ECR 419.

that it would, nonetheless, review Community measures for any violation of fundamental human rights, adopting for its criteria the constitutional traditions common to the Member States and the international human rights conventions to which the Member States were parties.

Other Factors Supporting the Federation Argument

The Principle of Implied Powers

Another doctrine that is especially important in the context of a federal Europe is the doctrine of implied powers. The Treaty broadly stipulates the material limits of Community jurisdiction.[38] The original understanding was that the principle of enumeration would be strict, and that jurisdictional enlargement could not be lightly undertaken.[39] The reason was that the Council was seen as an inter-governmental organization that did not have the power to create its own jurisdiction. However, in the 1970s and the early 1980s, the principle of enumerated powers as a constraint on Community material jurisdiction was substantially eroded, and virtually disappeared in practice.[40] This mainly happened through an extension of the doctrine of implied powers, most strikingly illustrated in the interpretation of Article 308 of the Treaty. Article 308 provides that:

> *"if action by the Community should prove necessary to attain, in the course of the operation of the Common Market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission, and after consulting the European Parliament, take appropriate measures."*

Following the Paris Summit of 1972, where the Member States explicitly decided to make full use of Article 308 and to launch the Community into a variety of new fields, recourse to Article 308 as an exclusive or partial legal basis rose dramatically.[41] This is another indication that the EU resembles a federation rather than an international organization.

The Principle of Subsidiarity

Aside from the existence of the essential conditions of a federal system, there are other provisions in the EC Treaty that make the EU resemble a federal state. An extremely important provision in this regard is the principle of subsidiarity, which has been introduced by Article 5 of the EC Treaty. According to this principle, in areas that fall outside the exclusive competence of the Community,

> *"the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community."*

It is clear from Article 5 that the application of the principle of subsidiarity involves a balancing test or a proportionality analysis.[42] The scale and effect of the proposed legislation by the EC have to be balanced against an assessment of which level of government can sufficiently achieve the object of the action. The centrality of the principle of subsidiarity can also be seen from the Treaty of the European Union

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[38] Articles 2 and 3 of the EC Treaty set out the tasks or purposes of the Community, from which its competence is derived, in rather open-textured language.

[39] WEILER, *supra* note 4, at 41.

[40] *Id* at 42.

[41] *Id*

[42] In this sense, the principle of subsidiarity is different from the principle of residuary powers (left either to the federal or the regional legislatures in most federal constitutions) as it does not involve a case of exclusive jurisdiction.

("TEU").[43] The Preamble of the TEU establishes the EU Member States' Resolution "*to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen, in accordance with the principle of subsidiarity*". Article F of the Treaty states that the EU "*shall respect the national identities of the Member States, whose systems of government are founded on the principles of democracy*", and that the EU itself shall respect fundamental rights "*as they result from the institutional traditions of the Member States, as general principles of the Community Law*". By referring to the Treaty of the European Union, in particular Article F, the ECJ can interpret and apply the principle of subsidiarity to incorporate the key principles of federalism, *i.e.*, diversity, democracy, and citizens' rights.[44] In light of all the above factors, it seems clear that the EU possesses at least some federal features.

Factors Inhibiting Further Integration

The primary factor against further integration is the democracy deficit in the EU. For instance, the United States Constitution and the Preamble to the Indian Constitution both begin with the words "*We, the People*", implying that the authority of the federal government emanates directly from the people. The Treaty of Maastricht, on the other hand, opens with "*His Majesty, the King of Belgium, Her Majesty, the Queen of Denmark...*" implying that the parties to the Treaty are sovereign States, and not the people of Europe.[45] In terms of institutional structure, in the United States, not only the Constitution, but also the institutions of the federal government – the Congress and the Presidency – derive their legitimacy from the American people. In the EU, however, direct democracy at the European level is severely restricted. The only real democratic legitimacy is achieved through the participation and influence of the Member States' Parliaments.[46] This has been a critical factor in influencing public opinion against further integration. The Federal Constitutional Court of Germany, in its 1994 decision in the *Maastricht* case, while reserving for itself the power of judicial review over the treaty, clearly rejected the idea that the treaty created the United States of Europe.[47]

Conclusion: Relevance to the Indian Constitution

It appears from the above arguments that the EU structure is really a *sui generis* one, with certain federal features, and is unlikely in the foreseeable future to become a federation in the traditional sense. As stated at the outset, one of the factors to be kept in mind while deciding whether an entity is a federation or not, is the desire of the Member States to achieve union in certain areas. Since there is a democracy deficit in the EU, there have been protests by the Member States against any further union. The improbability of any further

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[43] *See generally* Christian Kirchner, *The Principle of Subsidiarity in the Treaty on European Union: A Critique from a Perspective of Constitutional Economics*, 6 TULANE J. INT'L & COMP. L. 291 (1998); Paul D. Marquardt, *Subsidiarity and Sovereignty in the European Union*, 18 FORDHAM INT'L L. J. 616 (1994); Edward T. Swaine, *Subsidiarity and Self-Interest: Federalism at the European Court of Justice*, 41 HARV. INT'L L. J. 1 (2000)

[44] Edwards, *supra* note 15, at 543.

[45] Steve J. Boom, *The European Union after the Maastricht decision: Will Germany be the Virginia of Europe?*, 43 AM. J. COMP. L. 177, 208 (1995).

[46] *Id* at 210.

[47] There are actually three decisions of the Court, called *Solange I, II* and *III* respectively delivered in 1974, 1986 and 1994. *Solange* means "as long as" in German. The cases are so named because the Court in each case held that the treaty would be valid under German constitutional law as long as certain boundaries were not crossed. An unofficial version of the *Maastricht* judgement is available at 33 INT'L LEG. MAT. 388 (1994). *See* Iur, *European Integration: The Maastricht Judgment of the Federal Constitutional Court of Germany*, 17 FORDHAM INT'L. L. J. 411 (1994); Joachim Wieland, *Germany in the European Union – the Maastricht Judgment of the Bundesverfassunggegericht*, 5 EUR. J. INT'L L. 259 (1994).

integration in the near future is also strengthened by the decision of the German Federal Constitutional Court, according to which predominance is to be given to German national law, as opposed to EU law. All this is evidence of a reluctance to give up sovereignty in areas over and above what has already been seceded. Therefore, despite the decisions given by the ECJ, and the existence of a European Parliament, in the absence of the Member States' desire to move beyond a monetary union to a closer union in terms of unity of political systems, laws, and a supranational political authority, the EU remains un-federal, and is unlikely to move away from this stalemate in the near future.

The Indian Constitution has been variously characterized as federal, quasi-federal, statutorily decentralized, etc.[48] One charge that could be levelled against the Indian Constitution is that it is too centralized, and that the way it works in practice takes away even the minimum powers that the states have under the Constitution. The way in which European integration has taken place, and the process by which the EU Treaty and its interpretation by the ECJ has helped resolve the conflicting demands of the Member States, can prove instructive to the working of the Indian Constitution.

The main motivating factor behind European Integration has been economic development. This has been supplemented by forces working towards integration, like political leaders and business interest groups. The economic factor has been strong enough to persuade Member States to compromise on certain domestic policy issues. It would be useful for India to look afresh at what the motivating factor for its integration was, and see if it still exists. The process of India's integration was both a reaction to and a result of the British Raj. Before the arrival of the British, there was no entity known as India. What is known as India, today, was essentially a geographical mass consisting of small kingdoms. The British unified these disparate territories under a common political, legal, and administrative system. They also established means of communication and transport. This led to the fostering of a common sense of identity, and also led to the creation of the image of the British as a common oppressor. The leaders of the Independence Movement also worked to consciously create and foster a sense of belonging to a common entity called India. Therefore, Indian integration was essentially of a political and defensive character.

India has always been besieged by problems that go to the root of its federal structure and system of government. It is possible to observe that the reasons for Indian integration seem to be continuously challenged, from the rise of separatist movements and increasing demands for separate statehood. Keeping this scenario in mind, it may be advantageous to assess how far the economic factor would serve as an impetus to a stronger federation.[49] Secondly, the principle of subsidiarity enunciated in Article 5 of the European Treaty can find place in the working of the Indian Constitution. This is with respect to both the main objective of the principle – a test of balance and proportionality being applied to all the actions of the centre taken under either express or implied powers and the interpretation of the principle, which includes in its ambit respect for diversity, democracy, and fundamental freedoms. These should occupy a prominent place in assessing the actions of the central government and legislature, especially to contain its encroachment upon the legislative field of the constituent states. Therefore, even though the EU has emerged as a *sui generis* organization, it has certain federal characteristics that may be useful tools to better understand and rationalize the working of the Indian Constitution.

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[48] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION – CORNERSTONE OF A NATION 186 (1972).

[49] The economic factor has been the inspiration behind almost all instances of any kind of political unification. This stands true for two of the most successful instances of political unification, namely, the United States of America and the unification of Germany by Bismarck. The most recent example of this is the EU.