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Freedom Concept and Defence Policy in Europe - Remarks on the Foundation of Strategic Autonomy

Abstract

The war in Ukraine awakened the political will of the European Union to strengthen its strategic autonomy. Apart from technical difficulties, more fundamental questions arise: What are the preconditions for such a will for strategic autonomy? What do we want to defend at all in Europe? And, depending on that, what is the purpose of this autonomy, also in military terms? Yet one misses a publicly perceptible debate on these crucial questions within the institutions of the EU. This article aims to contribute to such a debate by outlining an intrinsic relation between the overall orientation of defence policy and the understanding of freedom.

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Russia's invasion of Ukraine is widely portrayed as a turning point in history in current public debates.¹⁾ It might well be that the utter astonishment in Europe created by the mere existence of this war is only another expression of an awakening from a pipe dream, namely a dream of the "end of history" (F. Fukuyama) in the sense of a quasi-automatic actualisation of "eternal peace" through an irresistible global triumph of democratic orders after the fall of communism. Because of this illusory belief, the European Union thought that it had been given the world-historical task, so to speak, of existing only as a "soft power". In the past decades, it was only after "shock moments" in the geopolitical competition for power that Europe was prepared to acknowledge the need for a pan-European security and defence policy. The establishing of real common institutional structures has therefore only recently begun.²⁾

Now, as a reaction to the war in Ukraine, there seems to be the danger of a merely pragmatic attitude to act for the sake of action - in compensation for decades of neglect, as it were - without any serious thought being given to the preconditions and objectives. A common will commits itself to a common good, which is a shared conception of freedom and its actuality. This is the very goal against which any strategic culture³⁾ is measured. We should know *what* we are defending if we take defence policy seriously.

It is in the legitimate best interests of the European Union to pursue the goal of being able to hold a (relatively) independent position in the multipolar world order as a global actor also militarily. *Nobody will be taken seriously as a real partner within the framework of a strategic partnership until they are able to cope with unpleasant tasks through their own efforts.* But what is required for this in the *medium and long term*? Certainly, the recently published "Strategic Compass"⁴⁾ sets out the steps to be taken to attain the military capacity to undertake small and medium-scale missions in the next decade. Yet, what is the medium- and long-term goal of increasing the military's capacity to act? Is

¹⁾ This text, completed shortly after the outbreak of the Ukraine war, presupposes that the EU could actually summon the political will to take responsibility not only for its "security" but also for its "defence". However, at the latest with the debate on Sweden's and Finland's NATO membership, this option is de facto beyond reach. Thus NATO appears to be - more than ever - the only institutional framework to effectively guarantee European security and defence.

²⁾ For instance, the European Defence Agency was founded in 2004, long after 1989; the Permanent Structured Cooperation (PESCO) was only agreed upon in 2017.

³⁾ Strategic culture can be defined as follows: "The concept of strategic culture refers to a nation's traditions, values, attitudes, patterns of behaviour, habits, symbols, achievements and particular ways of adapting to the environment and solving problems with respect to the threat or use of force. [...] A strategic culture defines a set of patterns of and for a nation's behaviour on war and peace issues. It helps shape but does not determine how a nation interacts with others in the security field." (K. Booth, The Concept of Strategic Culture Affirmed, in: C.G. Jacobsen (ed), Strategic Power: USA/USSR, Palgrave Macmillan, London 1990, p. 121. Any strategic culture reflects a certain understanding of lived freedom.

⁴⁾ See https://www.eeas.europa.eu/eeas/strategic-compass-eu-0_en, visited: 1.4.22.

there a shared understanding of freedom that fuels this political will? Is the political goal the establishment of an EU-army or a European army made up of national armies on a confederal basis? The strategic compass does not address these questions. This reflects the lack of a noticeable debate about these issues within the relevant institutions of the European Union.

However, the challenge to engage in this debate now lies clearly before us. We have to keep in mind that the fundamental precondition of a common security and defence policy is a shared *will to selfhood*, the commitment to a *common world of freedom* and its self-preservation.⁵⁾ What course must be pursued in the institutionalisation of the common security and defence policy if this policy is to strengthen *Europe's* strategic autonomy? The lack of engagement with these fundamental objectives may be understandable from a pragmatic point of view since declaring one's commitment to rethink and reform established power relations inevitably poses the challenge that geostrategic partners must adjust to new conditions. Nevertheless, addressing these issues seems to be unavoidable, for it cannot be in Europe's own best interests to remain a "free rider" in security policy for generations to come. Even more so because it would be another pipe dream to disregard the fact that other geostrategic partners also legitimately pursue their respective interests which do not necessarily coincide with Europe's best interests.

This article addresses these questions by shedding light on the intrinsic connection between the shaping of security and defence policy and the concept of freedom. Under what premises can an autonomous defence policy be conceived at all? This is to define more precisely the argumentative horizon within which the necessary debate could take place.

The key issues at stake can be summarised as follows:

- (1) What will to its own selfhood can Europe and the EU bring to its geopolitics and to its defence policy?
- (2) Answers here depend in turn on answers to the following questions:

What self-understanding, what conception of themselves do the European peoples have? Exactly what kind of freedom do they seek to realise in their lives and their institutions?

⁵⁾ Geostrategic actions of national and supranational actors - considered from the perspective of the philosophy of history - cannot be properly understood in terms of the motivations of single individuals, but ultimately concern a mutual measurement of entire worlds of freedom. These worlds cannot remain totally indifferent to each other, not only because of economic interdependencies, but also for the deeper reason that it is only in the engagement with the other that one's own cultural-civilisational profile reveals itself. Identity cannot be conceived without difference. Any identification presupposes differentiation.

1. Will to selfhood?

The EU's currently accepted understanding of itself rests on one assumption. Europe has learnt the lessons of its history and sees itself now as a force for peace firmly grounded in an encompassing *bonum commune*, in the sense of a *community of shared values*. These codified values are: human dignity, freedom, democracy, equality, the rule of law and human rights.⁶⁾ In these terms the EU has understood and still understands itself as an *avant garde* in geopolitics.

In many ways the history of the European unification is exemplary for the nations of the world in resolving disputes on *the level of consciousness* by resort to political and legal measures and no longer engaging in war to break the will of the opponent through physical destruction.⁷⁾ The European powers now seek to manage the conflictual issues in their life together - from economic problems across the board to questions of *weltanschauung* - with legislation and supervision by European agencies. The wars engaged in by the nations of Europe up to not all that long ago with their high death tolls have become unthinkable now.⁸⁾

On the downside after the fall of communism and the end of the East-West conflict (1989), in terms of security policy the EU has yet to find more than a minor role. Indeed after the end of the *pax americana*,⁹⁾ the EU confronts more clearly than ever before the following dilemma: whether to move decisively and consistently forward on the path of independence as a geopolitical actor or to continue with the *status quo*, at the cost of dependence for the relevant security and defence policies on those actors who successfully assert their relative sovereign position in a multipolar world. Up to now decision-making on this fundamental issue has been largely paralysed, for the *immediate* will to power of the Europeans - after two world wars - remains largely broken.¹⁰⁾

⁶⁾ See art. 2 of the Lisbon Treaty and in the Charter of Fundamental Rights of the European Union: https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_de, visited: 9.12.21.

⁷⁾ This image of stability and security is one of the motive forces driving migration towards Europe.

⁸⁾ Although wars between the nations of Europe seem now to be a thing of the past, the danger of civil war - one thinks of the Balkan conflicts of the 1990s - has not been eliminated.

⁹⁾ The reasons for this lie on the one hand in the reorientation of American politics to the particular *bonum commune* of the USA under Donald Trump. The thinking was that it was no longer acceptable to continue to bind resources to 'endless wars' given the pressing problems at home (such as the crumbling infrastructure), while failed attempts at installing a specific concept of democracy in some countries of Eastern Europe and of the Islamic world were also behind the reorientation. Recent crises in the self-understanding of 'western democracy' (one thinks of examples like the problem of post-democracy and the increasing erosion of binding norms) internally hollowed out the legitimacy of 'missionary activities' promoting democracy in non-democratic countries. On the other hand the economic and military challenges raised by China required a reorientation in the US' geostrategic commitments and activities.

¹⁰⁾ This holds especially for Germany but also for Italy, if less so for France which continues to act as a former colonial power and maintains the consciousness of a *grande nation* with a very exposed sense of power.

Such restraint on self-assertion is in one way certainly admirable as an expression of an attitude which in comparison to other international actors is more reflected and reluctant to adopt a prominent or exposed politics of power. Human conduct is not regarded primarily in terms of action or production. Europe favours diplomacy and does not see the other immediately as an aggressor but as long as humanly possible instead as a partner, whose particular interests have to be at least *understood*. Concealed in the character strength expressed by this attitude however lies a dangerous source of weakness not only in terms of the readiness to decide,¹¹⁾ but prior to that of the political power of judgement (in the sense of a capacity for differentiating between the attitudes of others) on how aggressors are able to achieve their aims to the disadvantage of (not only) European interests, especially when the activities of such aggressors concern (not only) the periphery of Europe, while in response they can at most be threatened with sanctions.¹²⁾

Moreover, the EU was able to sustain its self-definition as a peace power only so long as the Europeans could cruise comfortably in the lee of the *pax americana*. It was most convenient not to have to exert itself and demonstrate resilience in applying resources to its own security. The result however has been that Europe has not been able to develop (sufficient) capabilities to conduct international politics independently as a unity in pursuit of primarily European interests with commensurate force.¹³⁾

From a keen awareness of such shortfalls the EU has taken steps to strengthen its internal unity. Its terminology reflected this. Thus, since the Treaty of Lisbon (2009), it now refers to itself as a *union* and no longer as a *community*, the aim being to emphasise the character of (inner) unity. With this unlimited legal personality it can in a clearer manner operate as an actor both legally and politically.¹⁴⁾ In fact this new feeling of unity has been more of an internal phenomenon, in the sense of a strengthening of the central legal regulation power. In external relations in contrast the stronger feeling of unity aimed at only caused the precarious situation in defence and security policies to appear that much more clearly. Reactions included proposals to establish the EU as a *defence union*. Up to now the most significant step in this direction has been the PESCO Accord of 2017 laying a broad and promising foundation for a future European army.

¹¹⁾ Hesitancy on the level of political action quickly turns into negligent endangerment of the *res publica*, of the common good. The few exceptions - such as Quintus Fabius Maximus (the proverbial *cunctator* - military master of delaying tactics, approx. 275-203 B.C) in Rome's second Punic war - prove the rule.

¹²⁾ Thus, it is questionable whether the Iran deal so strongly supported by the EU against criticism from Israel and America really will lead to Iran backing away from its plans to produce atomic weapons. Another example is the migrant deal with Turkey that made the EU open to blackmail.

¹³⁾ The weakness of the EU penetrated down into the foundations even in its role as 'transatlantic partner' (this emerged clearly in the form of division in Europe in the course of the Iraq war) - which itself accelerated the end of the *pax americana*.

¹⁴⁾ See <https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>, visited: 08.12.21.

Tensions raised by this accord with the USA and in NATO are clear indications of the precarious status of European sovereignty.¹⁵⁾ This kind of sovereignty deficit can only be regarded as an expression of the self-understanding of a forward-looking peace power by ignoring the fact that it is only sustained at the price of having to serve the (legitimate) interests of actors external to Europe. It is consistent with mutual recognition that European actors who rely on a stronger power for their protection, while simultaneously not being prepared to bear the burden of the common defence alliance (2% of BIP), will not to be seen by their protectors as partners on the same level with equal decision-making power but rather as tools at their disposal.

A closer look at this situation however reveals that the reticence of European NATO members to accept a greater share of the burden for the alliance looks less like a lack of solidarity and rather more like a hesitancy arising from a growing awareness of the need for a fundamental decision of enormous weight and no less consequence. Do we want a common security and defence policy as a 'junior partner' under the umbrella of a comprehensive military alliance, which up to now has served its purpose well given the lack of alternatives, or do we make a start on progress toward being able in the medium and long term to stand on our own two feet? Unfortunately this reticence affects not only the relation to NATO; it is shown equally in a lack of decisiveness to build on the foundation of PESCO and actually achieve independence - not least in order to avoid undermining the transatlantic partnership in any way. PESCO consistently pushes the development of the armaments industry on European soil with its European defence fund.¹⁶⁾ The decision to regard PESCO as a new kind of NATO of European provenance in recognition of the seriousness of this issue, with the aim of integrating the USA, Canada and Norway into this genuinely European defence project as partner countries,¹⁷⁾ in fact looks more like tying moves towards sovereignty to the geostrategic *status quo*.

A whole series of crises in recent decades - military situations include those following the end of the East-West conflict and most recently the occupation of the Crimea, the prominent financial and economic crises, the migration crisis and securing external borders, and, of course, the pandemic - have exposed the Europeans to some highly suggestive questions addressing their willingness to be themselves. These crises were wake-up calls in a double sense: *ad intra* for the solidarity of the European partners and in reference to the question as to whether there *indeed must be* something like an overarching interest in a European common good, including its strategic security especially on

¹⁵⁾ Cf. Benjamin Zyla, *The End of European Security Institutions? The EU's Common Foreign and Security Policy and NATO After Brexit*, Berlin 2020, p. 98 ff.

¹⁶⁾ In this context the issue of dependence within the framework of 'nuclear sharing' has to be considered which has sharpened with Great Britain's exit from the EU.

¹⁷⁾ See <https://www.consilium.europa.eu/en/press/press-releases/2021/05/06/pesco-canada-norway-and-the-united-states-will-be-invited-to-participate-in-the-project-military-mobility/>, visited: 2.1.22.

the periphery; *ad extra* in reference to the awareness of the multifarious relations of dependence within which Europe seeks its independence.

The immediate result of these wake-up calls was initially that conflicts on various different levels broke out inside Europe. Indeed we remain in this situation. Such conflicts break out even in regard to the vital questions of security policy. Thus, the Baltic states and Poland look at their security provided by NATO, or even more closely by the USA, and will presumably not be prepared in the foreseeable future to diverge from this course to collaborate in the framework of a 'coalition of the willing and able' on the development of an independent European defence force.¹⁸⁾

This is hardly an unfortunate 'construction fault' in European unification that just needs to be repaired. In fact what it reveals is that the notion of a new homogeneous value community was at least partially a fabrication with which, it was hoped, the historically rooted cultural differences within Europe could be just leapt over to land safely on the ground of its fundamental universal values.¹⁹⁾ It seems that such a construction, supposedly capable of consensus, of a value community interpreted in a very specific manner remains on the agenda of the EU and is indeed to be implemented politically by it - more on this later.

Positively formulated, which is how fundamentally it should be understood, what we have here is a diversity of intellectual, historical and cultural profiles in Europe. Indeed, its emergence shows that Europe has to find a new and different understanding of itself as a *unity in diversity*. The dissent forces a reflection on the intellectual and spiritual foundations of the union and of its conception of itself. To what extent is Europe itself a space supported by a common consciousness of freedom? What could and should be the load-bearing columns of the union? Exactly how does the union see itself - as an economic user community, as a solidarity community, or primarily as a political community, in the sense one with a shared consciousness of an overarching, encompassing, common good?

This places the union before *two challenges* inseparably tied to each other. It has to confirm to itself the foundations and goals sustaining it and it has to find a way to participate in politically managing events in the world from its own roots and meaning resources in ways appropriate to its own standing. *Europe or the EU must face anew the fundamental question of its identity and its very selfhood.*

¹⁸⁾ NATO's re-emerging confrontation with Russia in recent years prevents a real development of an independent European security architecture - not least for the reason that the Eastern European states consider their security interests to be safeguarded solely by NATO.

¹⁹⁾ Cf. the east-west line in the divergence between the Viségrad group and representatives of west European countries.

In this context demands are increasing for a reorientation of the strategic culture of Europe.²⁰⁾ Those crises and their wake-up calls have caused awareness to grow that Europe's political weight is not to be measured in economic magnitudes alone, but also in the 'hard currency' of the potential for an indigenously constructed security and defence policy. A 'peace power' without the power to act makes itself the plaything of other actors. If Europe does have the will to become a sovereign global player and not to abandon the field to other powers, then the European peoples must summon a common will to identity and selfhood and to their institutionalisation. The question is: on what foundation? *From what sources, from what understanding of freedom can and should a European security and defence policy draw sustenance?* The answer to this question in its various formulations depends in turn on the question that has especially since the turn of the twenty-first century been intensively and controversially discussed in the context of proposals for an EU constitution: which direction should the union take in its own self-development? Two opposed paths have crystallised out of these discussions:

- (a) towards a *federal state* (a 'United States of Europe' in Winston Churchill's famous phrase), whose national armies in the long run will be replaced by or separated from the states and that
 - either in a clearer subsumption under the overall authority of NATO as European-NATO units
 - or in an EU-army centrally led and no longer primarily through the mediation of the member states (whose relationship to NATO would also have to be redefined); or
- (b) in the direction of a *federal states union* that step-by-step emancipated itself from NATO (which would not be interpreted as the end but instead as a historically necessary adaptation and further development of the union); this would create an explicitly European army which, analogous to the NATO model, would take its resources from the national armies.

It seems that Europe now stands at this parting of the ways, which as stated includes the unavoidable task of adjusting the relationship with NATO, something which for the majority of EU member states is simultaneously a self-relation.

In the following remarks I shall try to show how these fundamental alternatives are the implications of opposing conceptions of freedom, law, state and political community.

²⁰⁾ It will be interesting to see whether under France's EU presidency in 2022 Emmanuel Macron's call for an 'autonomous capacity to act' through establishing a 'common strategic culture' remains the politics of empty promises or not.

Every strategic culture draws on intellectual and spiritual resources from a commitment to a specific sense of self. In order to describe the strategic culture of a political union not merely externally but in terms of the sources of its understanding of itself, and of the corresponding potential energies contained therein, we have to start with *its consciousness of freedom*. A specific consciousness of freedom is the source for a specific culture. Our greatest achievement is not our high standard of civilization - on that point there is rather a lot we could do without. What is worth fighting for - at first and above all on the level of intellectual, not immediately physical conflicts - is that *consciousness of freedom* that has crystallised out of our bloody history. What in Europe should we defend? The general answer is: the existence of freedom. This existence is always precarious. This is not a fight with weapons, for this conflict is, first and foremost, one conducted in consciousness.

2. Profile of European consciousness of freedom

Freedom is not something that we can point to as an empirical object or a property of a thing called 'human being. Freedom is self-conscious self-determination. The actuality of freedom consists in a self-relation - or more precisely: freedom is the actual unity of self-relation and relation to the other (or world-relation).²¹⁾ I relate to myself only by relating to what I am not (unity of self and object consciousness). Thus, I experience myself as a free subject only in the concrete interaction with the world, in realising goals. This is reflected in what we broadly call 'culture', its institutions and its order. That means: in law, in our activity, in technology in the sense of the interaction with nature in pursuit of our goals, in social forms like family, society, economy and in the sciences, and this goes all the way through the cultural realm understood in the widest terms to the constitutions of states and the manner in which relations between states, as well as those of international institutions encompassing the states, are structured. What is present in all of this not as a given of nature but as a result of freedom, the historically achieved consciousness of freedom, is expressed objectively in structures of individual freedom worlds with their institutions and ways of life.

It must also be said however that the actuality of freedom is not exhausted in action. Freedom always also has to *interpret itself* and grasp itself as the actuality of freedom. This self-understanding of freedom is conducted in religion, in art and in philosophy.

²¹⁾ Hegel laid the foundation for this post-Kantian concept of freedom in his logic as the mediating as well as mediated movement of the 'concept' [Begriff]. Bruno Liebrucks coined the term "Weltauseinandersetzungprozess" following G.F.W. Hegel; cf. his principal work "Sprache und Bewußtsein" (7 vol.), Frankfurt am Main 1964-79.

The inner logic of the world-historical development of the consciousness of freedom stands under the goal of ensuring that freedom is generally lived and mutually acknowledged as the essence or concept of the human being:²²⁾

- (1) Freedom in the singular: one human being (the despotic ruler of the state, ancient Asia) knows himself to be free within the social relations, all others are unfree;
- (2) freedom as particular: some know themselves to be free to the exclusion of the unfree (ancient Greece and Rome; free citizens as opposed to slaves, barbarians etc.);
- (3) freedom as universal: it is known that the human being is free as a human being and has to be recognised as such.

This final principle of the universality of freedom arrived into the world with Christianity. Together with the achievements of the culture of ancient Greece as well as of Roman law in its initial insights towards the general recognition of the person in distinction to things, this principle forms the *foundation of European culture and beyond that of the 'western' civilised world*. Over the course of the centuries this principle has gradually been integrated into laws, institutions and constitutions. This principle does not hold because, considered externally, it was proclaimed by a certain religion, but because of the *internal rationality of its content*: the recognition of the freedom of human beings holds not for one (despot) or some (oligarchs) but for all.

Let us now try to specify the profile of this consciousness of freedom which, despite the differences which are not to be neglected, *substantially* connects us in Europe through its most fundamental aspects. Its content consists in the following.

- (1) That the human being as such has the goal to live *autonomously* - and that means: to lead one's life in a way that is governed by reason. This is the genuinely modern consciousness of freedom that emerged in Europe. This is the foundation of all human rights.
- (2) That individually and rationally realised freedom or autonomy is an *end in itself*. This is the heart of the notion of dignity. The human being (*humanitas*, Kant: humanity in the person) is never merely a means but must *always* be recognised *as purpose* and may not be wholly consumed in instrumentalisation.²³⁾ Not even in relation to the state.

²²⁾ See Hegel's Lectures on the Philosophy of History.

²³⁾ See Kant's 'humanity formula' for his categorical imperative: Immanuel Kant, *Foundation of the Metaphysics of Morals*, BA 67.

- (3) The insight that autonomy presupposes *recognition*. I only become myself through the recognition of others (summons to actualize freedom, already in upbringing). The human being is not an isolated I-atom as a member of society merely externally connected to others; instead he is *originally* related to others - he is what he is only through being recognised (Fichte: 'Man only becomes man among men'). This original relatedness between humans is immediately lived in the family but it is only in the state and in law that it is elevated to an explicit institutionalised practice. If freedom is conceived of as an end in itself, then the necessity of recognising the other as an end in him- or herself follows - all social and political relations should be shaped by this recognition.
- (4) A specific understanding of *law*: law is not an arbitrary coercive order of an authority, an instrument of social engineering, instead it should be *just* law (thus already the ancient tradition of natural law). This means that law should be the *lived recognition of external freedom*, or more precisely, the *same* freedom for all human beings. Law is a bastion of freedom. Herein lies the heart of constitutionality. Where this recognition is lived, where it is stored in legal institutions and protected there, that is where actual freedom is experienced. The genuine contribution of the European tradition is to see law not as a vehicle of the absolute power over life and death, but as a bastion of the protection of life in terms of lived freedom.
- (5) A specific understanding of *subjective rights*: every individual in society has the right to set his or her own perspectives and goals and to realise them as their well-being. This conception of freedom emerged first in Europe in the modern era in the framework of the development of civil society, of the economy and of the money system as relatively independent spheres of actual freedom and generally in the development of the territorial state. In this people understand themselves as private citizens, as economic actors or as consumers concerned with the realisation of the *pursuit of happiness* in relation to given needs. They behave as bourgeois not as a *citoyens* (Rousseau) who have to achieve their social recognition in the system of economic activity. The *right of subjectivity* (Hegel) that is expressed here is a self-legitimizing semantic dimension of freedom lying in the concept of (modern) freedom itself. It is the heart of political liberalism (John Locke), the abiding significance of which lies in the resistance to a *patriarchal state* that only recognises subordinate subjects.
- (6) A differentiated, sensitive understanding of the *relation between state and (civil) society*, sensitive especially to economic activity. Aristotle emphasises that in the state and in political organisation ultimately the issue is the good (just) life, and that it is from this perspective that the state has to manage the *particular interests* of the economic system, i.e. in view of the

common good, and to use the law for conflict resolution. The state is no mere tool we need to secure economic activity.

- (7) Europe has developed a deep non-instrumental understanding of the state. In the modern period after the wars of religion (the Thirty Years' War) the state and the legal system became institutionalised as *independent semantic spheres different from religion*. In what does this independent semantic domain consist? The task of the state is *mediating subjective freedom with universal freedom, with the common good*. In the state or as citizen of the state I live in the awareness that *I only have my freedom in the freedom of my society*. The institutions of the state are supposed to be the reservoir of a lived recognition of autonomy in the sense of rational self-determination (= self-legislation). Conversely the *society only has its freedom in the freedom of the individual*.

This is how the fundamental principle of political freedom as it has been lived in Europe in the modern period is formulated by J.G. Fichte. He writes, in 'justice, to recognise no law than that which one has given oneself.'²⁴⁾ It is on this basis that the rationality of the republic justifies itself as the democratic form of decision making. The sovereign - the ultimate legitimate power of decision - has to be the people. We owe to the consciousness of freedom of the European world the notion that the just manifestation of political freedom necessarily leads to the republic with a democratic constitution.

- (8) The notion that mutual recognition underlies the different segmentations in every society, of the ethical, cultural and religious differences as well as those of *weltanschauung*. The awareness that the human being is called to freedom as humans requires the recognition of the other in his alterity. The European family of peoples encompasses considerable ethnic and cultural diversity and on the basis of this notion of recognition it has developed *a form of cultural identity in which the fundamental readiness to recognise other cultures, customs, conceptions of the good life and indeed of other ways of life as such is regarded as an integrating component of the individual culture itself*. This is the meaning of the talk of pluralism and of the pluralistic society. But then the actual recognition of the other in his alterity does not mean reduction to whatever is convenient, a nihilistic homogenisation and a fetishizing of differences for the sake of difference. No, it means taking the differences seriously, which also includes in reference to tendencies opposed to this notion of freedom (e.g. political Islam) setting limits. A society understanding itself as pluralistic can only be

²⁴⁾ J.G. Fichte, Beitrag zur Berichtigung der Urtheile des Publikums über die Französische Revolution (1793), in: J.G. Fichte, Schriften zur Französischen Revolution, Leipzig 1988, p. 98.

founded on *firm prerequisites that have to be devoid of any arbitrariness*, that is in the commitment to just law as also of mutual recognition.

All of these points are *achievements of European civilisation* that enjoy profound resonance in the community of peoples, because they do not represent 'special material' regarding itself in culturally relative terms exported by power interests (colonisation), because they are seen in terms of the claim to universally binding rationality. The task of history was and remains working this notion of freedom into external reality, i.e. from this standpoint to turn social and political relations into expressions of the recognition of this concept of freedom. The potential for a vigorous common social life of the European states can be easily discerned from this profile of the freedom concept.

In the further development of the European Union priority has to be given to the maintenance and adaptation of those institutions and ways of life in which it is recognised that the human being is free as such. In the real destiny questions facing the EU the central issue is *thus what self-understanding of political community necessarily results from the idea that the human being as such is free*.

The most elementary challenge in security policy today lies in the fact that the ground is being pulled out from under the feet of the political community and its institutions by an abstract interpretation of freedom. The implications of this clearly go far beyond any (military) subconventional threat, for it is a matter of the commitment to being oneself as such. How ready are we at all to summon up a politically effective will to self-identity in the European world of freedom grounded in the concept of freedom described above, and indeed to assert it even *intra muros* against the resistance of the times and particular economic interests? Our next step will be to elucidate this abstract freedom concept in contrast to a freedom concept grounded in the achievements of European culture described above.

3. Opposed freedom conceptions

Distinct self-interpretations of freedom emerge simply from the fact that the human being, as the free being, has to interpret itself. As articulated in European culture (that of the 'western' world in total) there is a fundamental opposition that in a way lies in the logic of freedom itself. This lies in the fact that the *heart* of freedom, self-determination or autonomy, is understood not simply in different but in directly opposed ways. According to how autonomy is understood the world of freedom, the 'second nature' in the sense of manifested freedom, is structured in differentiated ways.

- (1) *Formal freedom, self-determination as (arbitrary, capricious) autonomous choice*: freedom is initially negative freedom (Kant) in the sense of being not immediately determined. Positively formulated: freedom is arbitrariness, caprice. In consciousness of the fact that I have several

or at least two options for action (to act in one way or the other, opposite way), the will chooses one of the options and proceeds to act. As such, caprice is initially a necessary moment of freedom in the sense of the awareness of capability. Freedom is however not exhausted in that. Freedom must qualify itself. It is I who has to choose one of the options, I have to decide. To this extent caprice is necessary here as the most fundamental and abstract moment of freedom. The decisive question is now: according to what principle should freedom be qualified? Our dispute then begins precisely at this point.

Caprice is a *content-neutral form* - as soon as this is elevated to the principle of qualification then freedom itself becomes formal. This is the abstract conception of self-determination. It connects to the moment of caprice and remains stuck there. The principle of freedom qualification lies in the individual as empirical subject, in its given intentions, tendencies, wishes etc. Then qualified freedom ('autonomy') is quickly identified with *private and subjectively arbitrary self-determination*. Binding obligation is understood as similarly 'individual', private and subjective and then completely breaks down into particularist (mutually exclusive) 'communities'. The aspiration lying in the *moral law* (in Kant's sense), namely to be unconditionally and universally binding, appears to this standpoint to be 'bourgeois ideology'.

This mode of interpretation becomes absolute when claims to universal obligation have to be reflected exclusively through this freedom to choose for oneself (more on this in (2) below). This interpretation of freedom sees in the state only limitations and barriers to freedom but not the presence of freedom itself. This approach fails to recognise that human individuality can only develop in a community of mutually recognising and reciprocally related people, a community that would not last without the institutions of the state, in the face of the fragmenting tendencies of civil society (in economic relations), in which people encounter each other as private citizens governed by self-interest.

(2) *Rationally determined freedom* means that caprice itself is determined by reason, i.e. that caprice itself submits to the claim to universal validity and necessity (universal lawfulness and objectivity of the maxims of action in the sense of Kant). It is in this way supposedly capable of establishing a relation to all the given intentions, impulses of the will and tendencies - indeed not just decisionistically, arbitrarily, but precisely determined through practical reason, i.e. reason leading action. Autonomy in the genuine sense (Kant) means *moral self-obligation*. Caprice determined by reason does not say: do what you wish; but: do only that which you should wish in the sense of the moral law (principle of rationally qualified freedom) and therefore ought to do.

Here too this is a fundamental right from which all particular rights (and duties) result, the *right of freedom to its presence*. Now this presence of freedom is not to be narrowed in advance and confined by the structure of subjective freedom. This latter initially has its right and its legitimate location in the framework of civil society (in the sense of Hegel), i.e. when we strive for the realisation of our conception of the good. In fact, subjective freedom is here not primarily a matter of entitlement, instead initially at least it is one of *defence rights* against state intervention.

Human life is not exhausted in being a member of civil society. Concrete freedom encompasses also relations of lived, institutionalised recognition (family, corporation and state) that have to be distinguished from the sphere of civil society and its social-atomistic conditions. Rationally determined freedom is all about freedom maintaining itself in space and time in its full sense in the most concrete way possible. In this sense law and state are necessary moments of a free life. For the human being does not have his existence as an abstract individual referring solely to himself. Instead, he has his existence only as an individual that is at the same time a social being. Only in this way does he *develop and receive* his identity in terms of a specific culture. Conversely a state only exists as an actual state by being recognised as such.

The starting point, then, is not where the representatives of abstract freedom begin, but a primordial relation of the human being to other human beings - the lived relations of recognition. Thus the initially 'subjective' spheres of external freedom of (private) law (property, contract - which is where the contractualist conception essentially begins) and the inner freedom in the sense of morality (as form of self-determination) are not self-sufficient; instead they presuppose a way of life of practised, 'objective' freedom (such as in family and state). It is only within these structures that a specific consciousness of freedom even begins to form, one which then goes on to take on a (private) legal and moral profile. Thus the relatedness of humans to others is not an external attachment as claimed by the standpoint of abstract freedom; *without this relatedness there would be no awareness of subjective freedom in the first place*.

The consciousness of the unity of identity and relatedness is concrete freedom. Hegel calls it *ethical life [Sittlichkeit]*. On this level of freedom in the ethical life we live in the certainty that we have our freedom not as isolated I-subjects but only as recognised ones. We understand that we have our independence not separated from our relatedness to others (in the sense of social atomism) but precisely and only in this relatedness. This relatedness is *original* (one thinks of upbringing in the family) and is not an external, subsequent relation added later to I-atoms already constituted and finished.

The awareness of freedom in ethical life expresses itself thus: I know that I only have my individual freedom in society. I support the political community of the state (e.g. in that I pay taxes or participate in the country's defence) in the consciousness that this community supports in its institutions the freedom I have legally and morally achieved.

In all that subjective freedom has maintains its own legitimate domain (among others in civil society and in the economy as the 'system of needs'). I know on the ground of the awareness of freedom in ethical life that my individual freedom is always already mediated by the recognition of others. The political organization of freedom - aiming at the mediation of individual, particular and universal, in the sense of the concretion of the *bonum commune* - has to derive its sustenance from this consciousness of freedom in ethical life.

The world owes a debt to European culture and philosophy (including Great Britain) for the formation of these dimensions of freedom. Nevertheless, the tendency to absolutize abstract subjective freedom increasingly predominates in people's understanding of self and world. In this lies the most fundamental challenge of security and defence policy. To elucidate this, we will briefly consider the consequences for the differing conceptions of law and state.

4. State and law

Opposed conceptions of freedom give rise to opposed conceptions of law and state:

- (1) The abstract subjective conception of freedom leads to contractualism or social atomism. Law and state here have their legitimation solely as *instruments* for securing that space of subjective freedom in the sense of individual choice. Freedom, as it is claimed, exists primarily prior to the state (such as in private property), but then its security has to be guaranteed by (public) law and hence by the state. When law as the central and organising fundamental law is understood in the broadest sense as the unhindered self-determination of the individual and then *protection from discrimination* is central to it, the state's legal power is only legitimated by securing the space of subjective freedom of private citizen, economic citizen, or member of society.

Such liberalism appears on the stage initially with a sympathetic face. It demands the 'slimmed down' state primarily protecting the individual from discrimination and otherwise concerned mainly with the economic sphere, with the 'system of needs' (Hegel). But one should not be deceived! The tendency here is to flip over into authoritarianism. Then warding off the danger to subjective freedom *from the*

state itself takes precedence (hence the separation of powers; cf. the development from Thomas Hobbes to John Locke).

The problem is persistent for it lies in the unquestioned premisses. If namely law and state are grasped only instrumentally then, despite the separation of powers, the problem arises that these instruments can easily become independent and be used contrary to their purposes. The goal of security and the securing of well-being can then sanctify (in a one-sided sense) the choice of the means. Such a state can become highly illiberal, paternalistic, indeed despotic ('father state'). A nightwatchman state that only has security functions for individual fulfilment in consumption and in the exchange of goods and capital can then become little more than organised violence. It becomes a police state, a despotic *nanny state*.

A state that knows nothing of a *bonum commune* going beyond the ethos of individual choice and the functioning of economic exchange sooner or later becomes the plaything of particular interests and of the powerful actors in the economic sphere. A commitment to the primacy of politics over economics necessarily gets lost in that. Such a state is confronted with the question as to where its primary task is supposed to lie: with the individual and his entitlements or with the economic actors without whom the individual cannot engage in his pursuit of happiness. Such a state would not be experienced as the space of freedom but as the administrator of those dependences in which we find ourselves when engaged in economic exchange. Such a state would no longer be known to be a structure of a freedom world of the individual that is justified in itself and which as such bears the necessity of its own defence within itself.

As soon as the commitment to being oneself is centred in subjective freedom in the state and its sovereignty, that commitment is no longer directed at the self-maintenance of a historically grown world of freedom, but with securing an effective defensive power for individuals relating to each other only externally. If the state becomes purely instrumental or contractual (which for our purposes need not be more precisely distinguished²⁵⁾, then it is not possible to derive from this a duty of defending the country in the sense of universal conscription. For it would be a contradiction if the state, which is only there to secure our lives, turned around and demanded that we sacrifice them. On such assumptions the defence of the country is not a matter for the citizen who is ready to act for his country, but a job for persons who, like mercenaries, are ready to take certain risks for payment. A patriotic attitude that is ready if necessary to expose its own life to the ultimate risk for the sake of the community and even to sacrifice its life is not possible under these premisses. If the commitment to

²⁵⁾ Kant stands in the tradition of contractualism while going beyond the mere instrumentality of law and state.

abstract subjective freedom is the organising centre, then there cannot be such a thing as a will to a particular identity for a specific and objective, institutionalised *freedom world*. The state, law and its institutional order, the particular culture and history then have no binding power in their own right that would mobilise wills. The world of the states appears as a product offer: my fundamental right in the sense of a claim to individual fulfilment is secured in many states. What does this state here offer me - what social security, health provision, career options, quality of life? Where can I optimally realise my interests? The binding to a state is mediated only externally via a specific interest in individual fulfilment. Here we see clearly in what perspective these questions are posed: in that of civil society.

- (2) The other conception of law and state opposed to the above follows from the concept of freedom as rationally determined caprice, developed by Kant and, in reference him, subsequently by Hegel. It consists in understanding law and state as presence, as the institutionalisation of rationally determined freedom. *Every state is the bearer of a specific stage of development of the consciousness of freedom that manifests itself in the state into an individual and historically specific freedom world and continues its development within that.* A state understood in this way does not exist from external necessity (utility) but from *inner* necessity. The state is necessary and justified in and of itself because only in the state do I achieve a consciousness of concrete freedom as consciousness of the *unity of individual* and community. The human being is not free in the full sense as an isolated I-centre, but only as a *social being*. As a social being I know that I do not have my freedom separate from the other, apart from human society.

This state does not merely turn on securing individual well-being; initially and above all it is concerned with the rule of law and the common good as institutionalised (rationally determined) freedom. This state does not exist as a bad objective superstructure but as a unity of two sides: unity of attitude (subjective side) and constitution (objective side) in a system of institutions. Both sides are unified in the consciousness of the citizen, I live in the awareness that my individual freedom is born by the state order. I find myself in my freedom in the relations of civic life.

This state will be supported by a consciousness of the good life, of freedom. It is that space bearing and enabling subjective freedom and the sphere of economic activity in the maximal possible liberality. It is however also the defender of a substantial conception of universal well-being which relativises the particular interests of economic activity. Conceived in this way the state is no Hobbesian Leviathan looming threateningly over the individuals. This state is infinitely stronger and at the same time infinitely weaker and more fragile: *it only lives in the patriotic attitude of its citizens*. Aware then that

my legally and morally achieved freedom is borne by the state, I bear it too, I know myself to be concretely identical to it (which also includes the consciousness of non-identity).

Since the state is an individual totality in the sense of the world of freedom, the abolition of the state would be synonymous with a radical levelling of all cultural plurality and differentiation. Abolishing the state would mean abolishing the individual location of lived freedom in a multipolar world. It would mean moving in the direction of uniformity, of a unity culture with unity citizens. This citizen would then be a 'globalised' bourgeois, an economic citizen and consumer with standardised needs. The demand for the abolition of the state is *de facto* the dream of making civil society absolute.

Now in our context we are not confined to the relation between citizen and state; we go beyond that to the relation of states to each other and the question as to how a community or unity of states is to be grounded. The opposed freedom concepts have in this respect too different implications.

5. State and supranationality

We shall proceed in three steps starting with a look at the step from the state into supranationality, which in global historical terms was achieved in the twentieth century. Moving on from that we look at the perspectives emerging in response from the two freedom concepts. Finally, we pose the question of the positioning of the EU in terms of these relations.

5.1 The step into supranationality

In absolutism and all the way to the nationalism of the nineteenth and early twentieth centuries the modern state saw itself as *suprema potestas*, as a power recognising nothing on earth above it. With its sovereignty lying in the self-maintenance of its freedom world, the state proceeded on the assumption that it had its identity quite separate from relations to other states. Both internal and external sovereignty seemed to be immediate functions of one's economic and military power. The relatedness to the other states appeared initially to be merely external. The other was seen only as a means to one's own political goals. This was a kind of hubris that turned into a bloody destiny. The states were operating in a space devoid of law in which the right of the strongest, the law of the jungle was the only one that mattered. Where they fell into conflict with each other the outcome was decided by war. This was the immediate recognition struggle (Hegel) on the level of the states.

A union of states in contrast is already rational simply because it partially reduces or even negates on the international level unbridled caprice and club law. Modern international law superseded that. It negated the immediacy of that acceptance of violence, i.e. the separation of identity and relatedness, in a more fundamental way. It prepared the ground for the notion that the sovereignty of the state

owed its *recognition* not to particularities like a contingent union of states, but *universally* to the others. The sovereignty of the state outwardly rested on the equality of the sovereign powers and their *ius ad bellum*. But established international law required their mutual recognition as independent powers, which was solidified in the *ius in bello* and in the restraint in war²⁶⁾. The well-known problems of the binding force of international law have shown that getting beyond the state of nature between the states and peoples is not to be accomplished on the level of a formally legal recognition.

Deepening this connection is required here. Independence and relatedness have to be thought together. States have their independence not beside but precisely in the relatedness to the others. *The state generates and receives its inner and its external sovereignty only in the political and economic interactions with other states*. After two world wars this principle is now understood to some extent. Relatedness is continually being institutionalised in supranational unions or organisations, thus not only between states but in overarching arrangements encompassing states. These supranational entities have the character of subjects of international law and so this new kind of relatedness has itself acquired political weight. Thus today (according to Bruno Liebrucks) we confront the task of integrating the relations between the states into our ethical worlds.²⁷⁾ This consists in acting according to the insight that *states do not have their independence for themselves or on their own, but in their very relatedness to other states*.

This awareness has become prominent by moving beyond the fixed notion of the state in the sense of nationalism. It is the awareness of an *overarching binding universal*: the freedom of the human being as such has been codified as a principle of natural law within positive law, e.g. with the Universal Declaration of Human Rights of 1948. This became necessary to secure the foundation of a lived supranationality and then the question became, how is this human right to be more precisely interpreted?

On this ground it becomes clear that states are obligated to organise their sovereign politics such that *the other state is never a means but is from the start recognised as an end in itself, as a free subject*. In general then the pursuit of particular interests and of the particular *bonum commune* is not considered abstractly, separated from the aspect of a supranationally legitimate common good with which the union of states is concerned. The state recognises that interest in the overarching common good is not external to it; the state integrates it - in a manner defined by the state itself - into its own particular

²⁶⁾ This relates to Carl Schmitt's expression 'Hegung des Krieges'.

²⁷⁾ The German expression is "Versittlichung", drawing on Hegel's distinction between (Kantian) morality and ethical life [Sittlichkeit] in terms of lived freedom and recognition. Cf. Bruno Liebrucks, *Sprache und Bewußtsein*, Band 3: *Wege zum Bewußtsein im Raum von Kant, Hegel und Marx*, Frankfurt am Main 1966 and: Liebrucks, *Von der Koexistenz zum Frieden*, Frankfurt am Main 1973.

common good interest. *It makes the overarching general good itself also into its own matter.* In formal law terms a sovereign state is as little susceptible to force here than in general one person can be brought to recognise another by force. Recognition is an act of freedom and must be mediated by public debates and political understanding.

The conscious step into supranationality thus means that the *states make their relatedness in mutual recognition to an explicit topic of politics and order it, organise it politically.* Supranationality means that relatedness and mutual recognition of the sovereign states as such are politically institutionalised and with that become a force and gravitation field which itself emerges as a global player. The majority of the states in the world have taken this step so their sovereignty is now a sovereignty within one or more union(s) of states. With that the sovereign state gives up parts of its sovereignty of legislation into the jurisdiction of the respective union of states.

The *challenge* in setting the relation between state and supranationality consists today less in overcoming a one-sided prejudice for the immediacy of the individual state against its relatedness to other states (in the sense of so-called neo-nationalism). Not even the superpowers can act today as if their relatedness to others were an external issue for them.²⁸⁾ The challenge consists much more in *ensuring that the side of relatedness does not establish itself independently in a one-sided way against the individual states such that these appear to be mere accidental to the substance of supranationality.* This latter perspective would effectively leave the individual states out and focus more on ‘calibrating’ a supranational structure. Such a construction would no longer be the location of a real freedom experience but a ‘superstructure’, a hypostasis, with which nobody could any longer really identify and would itself not recognise any citizen in the sense of the *citoyen*.

What is necessary then is to conceive of the state beyond both nationalism on the one hand and globalism on the other. Again deepening our understanding of freedom in the sense of the unity of independence and relatedness is required: I know that my freedom is borne by my state (consciousness of citizenship in the state) and this includes my living in the awareness that *the state again does not have its freedom separated from the state union, just as also this union of states has its freedom only in being recognised by the other global actors.*

The task facing us consists in differentiating horizons. *Consciousness of being a citizen of a national state* (‘I am an Austrian’) opens up to being mediated in an *awareness of being a citizen of the union of states* (‘I am a European’ in the sense of a citizen of the EU) and a *cosmopolitical awareness* that connects me to everyone beyond Europe. *It is not about replacing national interests with supranational*

²⁸⁾ This is demonstrated by the economic conflicts between the US and China. They cannot be indifferent to each other.

ones, but about integrating the supranational interests and perspectives into national interests and perspectives. This is precisely the consciousness that has to be strengthened.

It should be emphasised that the *location of mediation* is the awareness of being a citizen of the national state or of the state as a concrete freedom world. Only from the consciousness of being a citizen of a specific national state do I experience both relatedness in the sense of a particular union of states as well as relatedness in the sense of the universal *cosmopolis* as awareness of historically actual freedom. Its substance, its sense of self, its autonomy may not be resolved into a pure relatedness, into a pure functionality.

The consciousness that the state only gains its independence in relatedness, in recognition by others, acquires concretion of different kinds. We can distinguish three stages.

- (1) The most abstract pattern of mutual recognition is the *utilitarian alliance of convenience* mediated by a contract, especially in the case of an *economic union*; the states secure a space for international exchange of goods and capital to their own advantage as well as possibly also for the freedom of movement of its citizens therein.
- (2) The binding force of a *community of solidarity* goes beyond that. The other is here not only a useful partner to whom I am only externally linked, but a partner I will help when necessary even if that is not in my own economic interests. The perspective of self-interest is transcended (in analogy to what happens within states, e.g. corporations, labour unions).²⁹⁾ This is how recognition is concretised. The other is not merely a means in one's own policy but is also taken seriously as a purpose in its own right. This is consistent once it is comprehended that the freedom world of the individual state does not exist without the help and recognition of others. The states here already act from the awareness of a divided universal - e.g. as a community of destiny or in a cultural and geographical space.
- (3) A *political union* goes much further than a community of solidarity. The former presupposes that the states share the same freedom concept.

²⁹⁾ Even an insurance company is a community of solidarity supported by some notion of general utility. Without the contributions of all the services required by the few who actually need them could not be provided. One shares in the support of a system that should be to the utility of all even if not oneself a beneficiary.

5.2 Supranationality in light of the two conceptions of freedom

What are the respective implications of the distinct conceptions of the relation between state and supranationality?

- (1) In the sense of the abstract individualist conception of freedom the result is that the right to self-determination is valid not for the state in the sense of sovereign power but only for the isolated individual. If the state is just the guarantor for this entitlement, then not only does its cultural character, its particular freedom world play no role, it must in fact be excluded or levelled because the only legitimate task of the states is to secure this fundamental subjective right. The upshot is that for this standpoint there is no particular *bonum commune* to be mediated with an overarching, general one, and just as little is there any autonomy of the individual state to be secured in organizing the supranational relatedness.

In addition, the interconnectedness of international commerce in goods and capital in our time means that no state is any longer capable of fulfilling this securing task on its own. Supporters of a contractualistic conception of the state are therefore consistent when they demand that ultimately all unions of states have to enter into a world civil society controlled by a world state. Such a world state would serve its advocates as the true guarantor of world peace; to its critics however the whole idea is seen as the ultimate police state.

This contractualist standpoint has to locate substantiality completely in the relational structure that transforms itself into a new (centralised) meta-state. Thus, the step into supranationality is greeted by partisans of this position as liberation from the fetters of the state and acquiring a genuinely efficient instrument of security. Hypostasising supranationality aims at ensuring its independence from the state. Hence the imperative of organising the EU as a federal state.

- (2) Freedom as the presence of rationally determined caprice grasps autonomy not only in terms of self-determination as the right of the individual, but as that of states and indeed of peoples. The sovereignty of states may for this reason not be ignored and bypassed or completely negated. As a structure of the freedom world the individual state is legitimate in and of itself. In this context one can also speak of 'cultural sovereignty',³⁰⁾ for state sovereignty is secured not only in relation to the particular interests of economic actors. The truth lies in the unity of the individual state's independence and relatedness.

³⁰⁾ Thus, the much discussed strategy paper issued by the Kremlin last summer:

<https://carnegiemoscow.org/commentary/84893>, visited: 5.12.21.

This does not render talk of sovereignty moot. Every state, as indeed also every state union, is faced with the task of *structuring a unity of independence and relatedness*. How do we want to understand the independence of our state? To what extent do we have to secure a certain autarky and what compromises do we accept to that end? Following on from that, how do we want to structure the dependencies we enter into? What dependencies do we accept for economic and political reasons, which should we avoid?

Thus, sovereignty policy is not obsolete. We must maintain a clear awareness *that* we have to pursue an on-going structuring of our independence in the relatedness from specific premisses in the concept of freedom. Modern sovereignty policy has to concern itself with the *structuring of the unity of independence in relatedness in reference to specific freedom principles that have been historically arrived at*. Our conclusion here is that the task has to be confronted anew, and indeed continually, of determining the correct degree of the transference of government competence, which of course is a perennial issue for member states of the EU.

Sovereignty therefore means that the right to particularity as a sphere of concretely lived freedom persists also with regard to supranational relatedness. It is the right and the duty of states to ensure not in the first instance an abstract common good in general but a *concrete common good* (a 'world state' would locate this in a global 'interior'). Supranational institutions stand in this tension and it determines their limits. Institutions cannot impose limitations on the self-referential interests of powerful member states without at the same time eliciting the agreement of those states.

Is there then no alternative to the state of nature among the states? The war of all against all is *in principle overcome* once it is recognised that it is the task of politics to find a balance between the interests in particular common goods and the aspects of a supranational *bonum commune* that require and deserve to be recognised. Grasping the inseparable nature of these two sides is a prerequisite. The necessity of achieving this kind of integration becomes ever more clear in limiting our demands on nature as mere resource and in regaining the sovereignty of the political against the dependency on the power of global economic players. The agreement of the OECD states to a global minimum tax to be paid by the big corporations is one step in this direction.

On this standpoint then the necessity will be urged for a federal unity in the diversity of states while opposing a centralist dominance, in which the mediating medium term of political and juridical activity is placed in a network of institutions utterly separated from the individual states. *Both sides, the state as well as the supranational institutions have to be locations of mediation for the balance of interests between the supranational and particular states'* bonum commune. Both sides must have the respective other reflected within them.

We can now state that while according to (a) the goal is a levelling of cultural differences of the resonance spaces of freedom under the auspices of a civil society as a global unity, according to (b) it is a freedom in the diversity of cultural worlds approaching each other in mutual recognition.

6. EU profile

Our provisional result was that the main content of the step into supranationality is the insight into the unity of independence and relatedness of the states. The next question is: how does the supranational character of the EU manifest itself? In other words, in what precisely do the member states of the EU find their relatedness to each other?

- (1) The EU began as an economic union, as a community organising the coal and steel industries in the Paris treaty. The main intention of the founders was not raising standards of living or merely establishing a community of utility. Instead the idea was that prominent differences, e.g. between France and Germany as well as those arising from the East-West conflict, could be safely managed through economic exchange. Moreover, with the addition of deepening interrelations an optimally stable peace (at least as coexistence) could be achieved. Today the EU is a successful economic power, leaving aside the problems of the Euro zone. An internal market and a corresponding civil society that is homogenised and porous in many respects has been established. But is there more to the relationship between the European states than that?

- (2) How strong is the EU as a solidarity community? On the one hand it organises a redistribution from rich to poor, between net payers and net receivers, in its coordination of economic and budget policies. But a solidarity community shows its strength above all in times of crisis. In view of the finance crises of the past and their resolution, the question arises as to the extent of the readiness to put aside utility calculations.³¹⁾ A solidarity union would require political relativisation of economic actors' particular interests from the standpoint of an overarching conception of the common good. Instead, whole states have been turned *de facto* into debt colonies. Then the corona crisis turned the EU as a whole into a debt community. Dealing with these burdens in the future will surely not be achieved solely through economic growth and it will be another litmus test for the solidarity community.

The commitment to solidarity is nourished from the consciousness of a common freedom world ('life and destiny community') that has to be organised, maintained and protected. This

³¹⁾ Consider the situation Greece was put in by the financial crisis of 2008. Despite the debt incurred by the EU it was not even possible to avoid selling out Greece's strategic infrastructure to China's influence buying policy. How could a solidarity community allow that to happen?

consciousness - for instance, I am an Austrian, a European and a person - cannot be externally imposed but has to grow over generations and through shared experiences.³²⁾

- (3) In recent decades there has been much talk that Europe needs a 'soul', an internally unifying principle going beyond the relations enabling an internal market.³³⁾ This is the prerequisite for a solidarity union and even more necessary for a political union. In the Lisbon treaty the EU spelled out exactly how it sees this soul, namely as a *value community*. Article 2 of the treaty of Lisbon states: "The Union aims to promote peace, its values and the well-being of its people"³⁴⁾ These values are named by article 1a as follows: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."³⁵⁾

This is on the one hand progress in firming up consciousness of a common freedom world going beyond calculations of utility. On the other hand there do arise certain difficulties from this manner of textual fixing or codification.

The term 'value' already suggests fixity, unconditionality, a standard of orientation. But in fact, the value concept is intrinsically nihilistic for this fixity is only relative to an external mediation. Values are what one can revalue.³⁶⁾ Their location is the market, the meeting of supply and demand. A commodity only has value in relation to its use, to economic exchange, but not in and for itself. Immanuel Kant, the most important thinker of the European Enlightenment, distinguishes strictly between value and dignity. Value can be measured in a price. But the human being has no price, rather the presence of an unconditional, of freedom, reason *in individuo*. A being that has dignity cannot be regarded solely as a means, but brings with it the demand to be recognised as an end in itself. The contribution of the European tradition should for this reason lie rather in reminding us that we should not there speak of 'values' where it is about the unconditional, about dignity - but this is what happens when we talk of ourselves as a value community, one element of which is supposed to be dignity.

³²⁾ This is why it is important to awaken and deepen this consciousness of commonality through exchange programs like Erasmus, city partnerships etc.

³³⁾ We refer to the well-known remark of Jacques Delors that one "cannot not fall in love with the single market" (Address to the European parliament of 17.1.1999:

https://www.cvce.eu/content/publication/2003/8/22/b9c06b95-db97-4774-a700-e8aea5172233/publishable_en.pdf, p.3, visited 8.1.22).

³⁴⁾ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12007L/TXT&from=EN>, visited 8.12.21.

³⁵⁾ Ibid.

³⁶⁾ Friedrich Nietzsche pointed this out in a popular manner ('revaluation of all values').

The representation of values required by European law internally and externally leads to pragmatic problems:

- Values, precisely because they can be arbitrarily 'revalued', can be easily instrumentalised: in the hands of politicians they quickly become ideological weapons;
- claiming a 'value union', especially one with a 'moral index finger', enable all to easily instrumentalisation by geostrategic opponents,³⁷⁾ if admitting hypocrisy before the eyes of the world of a regime of values is to be avoided.

(4) The internally unifying principle ('soul') can only be the shared consciousness of freedom of a life and destiny community of various peoples. This freedom consciousness encompasses not only the freedom of action of the individual; it is also a freedom that has particularised itself into cultural, intellectual, spiritual and linguistic worlds which in the course of a long history have both grown together and grown apart.

Here we stand before the decisive point: if we take this individual freedom world as such seriously, we cannot level down a politically united Europe without more ado on the model of the American federal states into a United States of Europe. But at the same time the EU as a supranational unity cannot be merely an *interstate* external unity. The difficult political task lies in not hurriedly ignoring or erasing the sovereignty of the member states; instead it needs to be developed further in the direction of a *common, European sovereignty*.³⁸⁾ The will to autonomy of the states is then mediated by the will to a common autonomy of a 'union of states'.³⁹⁾

The EU thus faces the difficult task of withstanding the tensions between the sovereign states and its own supranationality. We shall now consider just a few points to illustrate just how these tensions manifest:

- (a) In the treaty of Lisbon we have an assertion on the one hand of the self-understanding of a *union of states* in the sense of classical international law, which union is mediated by the

³⁷⁾ Thus, migration was intentionally deployed by Belarus against the EU in November 2021. Cf. The article entitled: Härte gegen Belarus: Gibt die EU dabei ihre Grundwerte auf?, in: Die Zeit (20.11.21) https://www.zeit.de/news/2021-11/20/haerte-gegen-belarus-gibt-die-eu-dabei-ihre-grundwerte-auf?utm_referrer=https%3A%2F%2Fwww.google.com%2F, visited: 8.12.21.

³⁸⁾ In international law the term is 'shared sovereignty' (geteilter Souveränität). Cf. Andreas von Arnould, *Völkerrecht*, 4th ed. Heidelberg 2019, p. 39.

³⁹⁾ 'In order to characterise the peculiar status of the EU between international organisation and federal state the term association of states [Staatenverbund] has been adopted by German jurisprudence.' Ibid. p. 50.

member states as the ‘masters of the contracts’⁴⁰⁾ who do not abandon specific sovereign rights but simply relinquish their enjoyment.⁴¹⁾ Thus it is stated in article 3a:

“The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. *It shall respect their essential State functions*, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. *In particular, national security remains the sole responsibility of each Member State.*”⁴²⁾ (author’s emphasis)

Although this treaty describes the institutions of the EU and their jurisdictions, it does not regard itself as a ‘constitution’ but merely as a ‘treaty on the functioning of the European Union’. In this too it is expressed that the EU does *not* understand itself to be a federal state with an overarching constitution. Thus, the treaty of Lisbon contains no article “formally enshrining the supremacy of Union law over national legislation.”⁴³⁾

On the other hand, there is a strong tendency of supranationality precisely in European judicial culture. Thus the CJEU has been emphasising since the 1960s the sovereignty or independence of EU law that is neither traditional international law nor domestic law of the states.⁴⁴⁾ The supranational aspect lies in the “precedence and immediate applicability of EU law.”⁴⁵⁾ This is where the currently politically charged question as to in what areas and according to what rules EU law should be able to derogate national law - even unto national constitutions - in the case of conflicts between them.

(b) We have asserted that on both state and supranational levels the respective other has to be represented so that the mediation of the association of states will not be one-sided. This is in fact manifested in the architecture of EU institutions. Thus, on the one hand there is the council of the EU and the European parliament in which the voices of the members states are represented. On the other hand, there are institutions primarily concerned with structuring supranationality and its unity itself (commission, European court of justice, European central bank, the European court of auditors etc.).

⁴⁰⁾ Ibid. p. 39.

⁴¹⁾ The crucial point is thus in terms of classical international law the right of states to withdraw from the union of states.

⁴²⁾ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12007L/TXT&from=EN#d1e560-1-1>, visited: 8.12.21.

⁴³⁾ <https://www.europarl.europa.eu/factsheets/en/sheet/5/vertrag-von-lissabon>, viewed: 8.12.21.

⁴⁴⁾ Cf. Arnauld, Völkerrecht, p. 39.

⁴⁵⁾ Ibid.

Subsequent development of the EU in the tension between independence and relatedness of the states, between individuality and universality, depends essentially on which kind of interpretation of freedom asserts itself in the common European world and achieves institutionalised weight.

- (a) If abstract subjective freedom forms the foundation of self and world understanding, then it is consistent to develop the EU further into a federal state. The plurality of states as such has no inner legitimation; it is bound to appear to be an obstacle to legal authority that has to both administer and govern efficiently on the inside and assert itself as a unity outwardly.
- (b) If on the other hand we grasp the state as a necessary manifestation of rationally determined freedom, then the further development of the EU cannot aim at dissolving the states and the living resonance spaces of freedom within them. A particular freedom world has its right and identity and self-preservation as such, in its own right.

The respective consequence for common defence and security policy is clear.

- (a) If it is only about securing the economic functionality of a community then there is nothing wrong with abolishing national armies within the EU as long as a supranational substitute is provided. Here then the tendency is first towards an EU army in the sense of a metanational mercenary formation. None of this hinders this standpoint from not creating a large EU army (as opposed to a small battle group) at all and leaving defence tasks in the hands of NATO. What this position lacks completely is that sovereignty consciousness from which alone the political will to the construction of transnational European military structures could be achieved.
- (b) If instead the goal is the self-preservation of a cultural freedom world with a sovereignty consciousness deriving sustenance from that then defence strategy would set other priorities and pursue other purposes. In laying the foundation for a future security policy in this perspective a broader horizon is called for, as opposed to the focus on technical questions and utilitarian calculations. From the notion of (at least) a solidarity community in relation to a common freedom world follows the imperative of building a *European army* which - analogously to the model of NATO - is constructed from a combination of the (capable and willing) national armies.

Here we come to the decisive point in the further development of the EU and its relation to NATO. The questions is: to what extent do we defend Europe at all out of a consciousness of *European*

sovereignty? Let us take a closer look at what the concrete challenges are that arise for Europe in view of this question.

The fundamental security policy task consists according to what has been stated above in strengthening and structuring the consciousness of a unity of the independence and relatedness of Europe. But that requires a *will to identity* of European freedom world(s). In other words: a *will to sovereignty*.

This is countered by the tendency to formal freedom in Europe which is spreading rapidly. It leads to the evaporation of the individual's consciousness of being a citizen of a state. The recognition of the state as the guarantor of freedom would provide support not only for a militia army - like the American national guard or the British territorial army - but would also have to be as it were motivationally load bearing for a professional army too. For it is this attitude by which a genuine army distinguishes itself from a mercenary troop.

The situation becomes serious when the ethos of formal freedom is also represented in a prominent way by EU institutions. According to that ethos of formal freedom the whole meaning of law and state consists primarily in ensuring the entitlement of human beings to meet their own needs and to strive for their own self-assertion. We find this in a prominent position in the treaty of Lisbon, namely in the interpretation of those values for which the EU claims to stand. Article 1a at first names the values claimed to be binding and gives in its second sentence an interpretation of how these values are to be more precisely understood and how they are to be realised.

“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”⁴⁶⁾

Two points:

- (a) the isolated individual is taken as the first point of reference: the justice of law is measured against the respect for and protection of primarily *individual entitlements*;

⁴⁶⁾ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12007L/TXT&from=EN#d1e560-1-1>, visited: 8.12.21.

(b) just relations are thus understood in the sense of a lived formal freedom.⁴⁷⁾

This shows that as a pathway to independence, formal freedom has penetrated right into the centre of the EU's self-understanding.

Finally, we conclude then that the most profound problem facing European security policy lies inside its own house. The load-bearing pillars of the European freedom world are coming increasingly under pressure because of an erosion of the consciousness of the unconditional, universally valid binding force of norms and of rationally determined freedom. This conception of freedom seems to be a tinderbox for Europe since its abstract individualism undermines any civic consciousness.⁴⁸⁾ The plurality (or critically put: fragmentation) of freedom worlds confronts us with the issue of unity in diversity. If all that is left for this unity is merely the securing of the arbitrary private and subjective freedom of action in a common economic space, then the fundamental problem with that scenario is that an internally fragmented community can only be held together by external powers of state and supranational organisations.⁴⁹⁾ That however deprives from the start any attempt to comprehend the EU as an association of states with corresponding or coordinated security policies of its foundation. In this light it is not surprising that Europe is hardly capable of summoning the will to the self-preservation and security of the state in the sense of any independent military defence.⁵⁰⁾

⁴⁷⁾ An official interpretation of the fundamental rights also points in this direction: 'Human rights are protected by the EU Charter of Fundamental Rights. These cover the right to be free from discrimination on the basis of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, the right to the protection of your personal data, and the right to get access to justice.'

(https://european-union.europa.eu/principles-countries-history/principles-and-values/aims-and-values_en, visited: 8.12.21)

⁴⁸⁾ It is precisely this point that fuels the Sino-Russian axis against "Western hegemony".

⁴⁹⁾ The situation becomes more serious with the increasing presence of political Islam. A freedom interpretation oriented to Islam has to move away from a freedom culture devoid of norms and limitations. But as long as European Islam seeks to gain its identity only in itself staying away from this form of freedom, fanaticism results which is the root of terrorism. Hence the need for a European Islam recognising the (modern) European achievements such as the separation of church and state as well as of religion and law. But then such a recognition is only to be expected when what is confronted becomes experienceable as a form of lived rationally determined freedom.

⁵⁰⁾ Cf. A study by the Gallup institute to commitment to national defence in 64 nations conducted in 2018:

(<http://www.marktmeinungsmensch.at/studien/wehrwille-in-oesterreich-und-deutschland-im-intern/studie/>, visited: 8.12.21).

This tendency is reflected in the legitimization crisis and chronic underfunding of the armed forces that has persisted for decades in Europe.

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