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## Globalization, Technologies and Legal Revolution

The Impact of Global Changes on Territorial and  
Cultural Diversities, on Supranational Integration and  
Constitutional Theory

Liber Amicorum in Memory of Sergio Ortino



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**Prof. Sergio Ortino**

**29 December 1940 – 7 July 2011**

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## The Future of Federalism in Europe and Globally

Mitja Žagar

### 1. Introduction

When colleagues from the European Academy of Bolzano/Bozen (EURAC) invited me to contribute to an edited volume (*Festschrift*) planned to honour the scholarly work and contributions of our dear colleague and friend Sergio Ortino on the occasion of his seventieth birthday. I gladly agreed to write a chapter on European federalism – the topic on which Sergio, Vojtech Mastny, I and a number of colleagues worldwide cooperated for almost two decades, particularly within our research and book project. The central and most visible result of our cooperation was the book *The Changing Faces of Federalism* that Sergio, Vojtech and I edited.<sup>1</sup> This book received several positive reactions, comments and reviews<sup>2</sup> and currently is being used as textbook in several, particularly (post)graduate, programmes in Europe, North America and Africa.

I started to work on my chapter when I learned that Sergio had passed away unexpectedly. I was saddened and shocked. Suddenly, the chapter I intended to write – a typical scholarly text on the applicability, current situation and future of federalism in Europe, reflecting Sergio's contribution to the topic and theory – no longer seemed to make sense. As it was conceived, this text was just another scholarly contribution to the topic that would add an additional entry to an almost endless list of published titles on federalism. I realized that such an approach would not do justice to Sergio, his work, idea(l)s and particularly attitudes to, and passion and efforts for, the application of federalism in contemporary societies within the European framework and globally. No doubt, Sergio was a true scholar who knew and mastered his scientific disciplines and fields (law and economics, also social sciences in general, e.g., in studying federalism, minority protection and self-government, governance, etc.), theory and methodology to which his work and legacy in science, research and higher education

1 S. Ortino, M. Žagar and V. Mastny (eds.) *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West* (Manchester University Press/Palgrave, Manchester, New York, 2005).

2 See, e.g., C.S. Allen, 'Sergio Ortino, Mitja Žagar and Vojtech Mastny (eds.) *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West* (Manchester and New York, Manchester University Press, 2005)' (2006) 36 *Publius* 5, pp. 468–469.

testify. However, Sergio was much more. He was a world-class intellectual, humanist and social activist who – aware of the contemporary situation and many problems that our societies and the world experience – believed that our lives and world could be improved if everybody, individuals and all relevant collective entities, contributed their share. Consequently, when discussing federalism he was not just an objective scholar, but also a true believer; however, he was aware of problems and shortfalls of concepts, models and practices of federalism. We shared this passion – both being federalists, at times active in federalist movements. There should be no surprise that frequently our discussions on federalism were intense and passionate, sometimes utopian, sometimes down to earth and directed at developing viable solutions and arrangements, often alternative to the ones discussed in respective environments for specific situations. We focused particularly on European countries and the European Union (EU). This chapter is a reflection of our cooperation that in time grew into a friendship, as well as the presentation of our permanent discussions on federalism and its future in Europe and globally that continued for almost two decades with differing intensity at times.

Our occasional meetings (particularly those within or in relation to projects in which we participated and collaborated) initiated and stimulated these discussions that continued in our correspondence in the time between those meetings and in the past five years. This correspondence included a few letters initially and then several electronic messages. The intensity of our communication increased particularly in the final stages of editing the book, especially in 1999 and 2003–2005 when sometimes a few messages were exchanged daily. Although several messages in this period dealt predominantly with editorial matters and communication with the publisher, they always included at least a few sentences on different relevant topics within our ongoing discussions on federalism. These discussions occasionally transformed into heated debates on concepts, models, policies and practices of federalism in various environments at different levels that reflected our different views and positions. In this context, we paid special attention to the ongoing public and political discussions on the possible introduction of diverse federal arrangements, as well as federal reforms in diverse environments at different levels including the European one.

Sergio, Vojtech and I agreed that in contemporary societies federalism might be an adequate theoretical, social and political concept, model and framework that can contribute to a more successful regulation and management of diversities in complex contemporary societies. Consequently, the central hypothesis of this contribution is that federalism is and will remain a viable alternative of social organization (in comparison with unitary and other concepts), and possibly an effective tool for the successful management of diversities and asymmetries in contemporary European states, in the process of European integration and glob-



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ally. To improve its efficiency in every respective country and at the European level, federalism needs to be accommodated to a specific social, economic and political situation and the needs of the respective population and society.

### **2. Our Meeting and Cooperation on Contemporary Federalism in Europe**

However, before I address federalism in Europe in the past, at present and particularly in the future, in light of our scholarly discussions I believe I need to describe and explain my relationship and cooperation with Sergio.

I first met Sergio in the beginning of the 1990s in Wojtech's office at the Johns Hopkins University in Bologna. I still remember Sergio's warm smile and lively eyes that welcomed me and broke the ice when Wojtech introduced us, even before our first words were exchanged. We met to discuss a project on federalism that Sergio and Wojtech had started to develop. Its central aim was to establish a network of scholars from the East and West, from Europe and North America, that would study the actual and possible role and impact of federalism at all levels, from subnational levels to interstate level within European integration processes in the development of post-communist Europe. We immediately engaged in a lively debate that determined a number of relevant issues that needed to be considered in studying federalism, while special attention was paid to the development of an extensive list of scholars, from all the regions listed above, who could be invited to participate in the project. However, at that point we were not aware that this meeting was the beginning of our cooperation that would continue for some 15 years and result in a book that we edited. In the process, a broad network of participating scholars was developed that – at least in some segments and among colleagues who became friends – continues to exist and cooperate, although sometimes sporadically.

It was a pure coincidence that I was in Bologna at the time and that Wojtech knew about my interests and research in federalism, as well as of my connections with scholars and different scholarly networks in Western, central and Eastern Europe, as well as in North America, which were the main reasons why they decided to invite me to join them and participate in the elaboration and execution of the project. The staff at Johns Hopkins University School of Advanced International Studies in Bologna knew me and my research well, particularly the staff of their excellent library that for a number of years provided the essential assistance in my research of democracy, democratic institutions, political parties and trade unions, reforms, democratization and democratic transition, federalism and European integration that was also the basis for my doctoral dissertation on con-

temporary federalism and the model of asymmetrical federation.<sup>3</sup> In the late 1980s, when in Yugoslavia it was becoming extremely difficult to obtain contemporary Western European scholarly literature and sources – due to the economic crisis and lack of hard currency needed to purchase these – this library became my lifeline that enabled the adequate continuation of my research and study. I was welcomed there upon the introduction and recommendation by Professor Branko Pribičević who was among the professors of the Johns Hopkins University School of Advanced International Studies in Bologna and whose assistant I was at the time in the Faculty of Political Science, Sociology and Journalism – now the Faculty of Social Sciences – at the University of Ljubljana. Simultaneously, I started to develop connections and cooperation with my colleagues from the University of Bologna. Although my financial resources were rather limited at the time, I was able to visit Bologna several times every year due to the fact that Ms Lina Amaduzzi (whom I called ‘my Mama Lina from Bologna’) invited me to visit her regularly and provided not only accommodation, but also full board, free of charge, later extending her hospitality also to my partner Irena, my assistant and a few graduate students. These connections and her friendship with Professor Pribičević, whom I introduced to her, stimulated her to start a few humanitarian actions and to send assistance to the victims of war in the former Yugoslavia in the 1990s. Close links with Lina continued until her death a few years ago. However, I am glad to note that many connections and, at least occasional, communication and cooperation with colleagues and institutions in Bologna continue to this day.

### **3. The Applicability of the Federative Model in the Relations between States in Postcommunist Europe**

After our first meeting developments were rather rapid. Our network grew, new colleagues joined, while some continued to participate sporadically or only cooperated in a particular activity or event for a limited time. In 1994 the project called The Applicability of the Federative Model in the Relations between States in Postcommunist Europe was established as one of the Pan-European Research Groups of the Council for European Studies in New York. Its aim was:

3 M. Žagar, ‘Sodobni federalizem s posebnim poudarkom na asimetrični federaciji v večnacionalnih državah’, Doktorska disertacija [Modern Federalism and the Applicability of the Theoretical Model of the Asymmetrical Federation in Multi-Ethnic States, PhD dissertation], Univerza Edvarda Kardelja v Ljubljani, Pravna fakulteta, Ljubljana, 1990.

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to bring together scholars from North America, Western and Eastern Europe to jointly study different aspects of federalism at both national and supranational levels within the interstate setting of post-Cold War Europe. Drawing on expertise from different disciplines, including political science, sociology, history, constitutional and international law, the project has been directed by Vojtech Mastny and Sergio Ortino.<sup>4</sup>

With the goal to produce a comprehensive and authoritative volume on the past, present and future of federalism in Europe, particularly in central Europe initially (Middle Europe, or *Mitteleuropa*), a series of three working meetings (conferences) of participating scholars was planned. These scholarly conferences were designed to bring together the members of the research group, as well as some other invited scholars and practitioners, with the aim of stimulating their scholarly debates on concepts and approaches to studying federalism, the exchange of information, data and research findings, as well as their cooperation. The first meeting aimed to identify key directions, avenues, relevant topics and problems that needed to be studied, as well as the basic structure and contents of the volume as a whole and the individual contributions that ranged from specific case studies on federalism and federal experiences in different countries, the analysis and interpretation of theoretical concepts and specific historical experiences with federalism, to the discussion of relevant theoretical issues and federative models potentially applicable in different environments and at all levels – including subnational, national and international levels. For the successive meetings, organized as intense and targeted scholarly discussions, the participants in the group agreed to prepare their draft contributions and revise them subsequently, considering the comments, discussions, suggestions and recommendations of other participants in the group, as well as scholars and experts in specific areas and fields invited to the respective conferences.

The first meeting of the group was held in March 1995 at the Johns Hopkins University School of Advanced International Studies in Bologna, Italy. The second meeting was held in May 1996 at the Open Media Research Institute (OMRI) in Prague, Czech Republic. The third meeting took place in August 1997 at the European Academy in Bolzano, Italy, which also provided financial support. At this meeting, the group appointed Sergio Ortino and Mitja Žagar as co-editors of the book, and Vojtech Mastny as a co-director of the project agreed to assist the editors.<sup>5</sup>

4 S. Ortino, M. Žagar and V. Mastny, 'Introduction' in S. Ortino, M. Žagar and V. Mastny (eds.) *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West* (Manchester University Press/Palgrave, Manchester, New York, 2005), p. 1.

5 *Ibid.*

Mitja Žagar

Within a specific historical context, and reflecting contemporary developments, particularly the ongoing processes of democratic transition and the Eastern enlargement of the European Union, the research project, its contents and scope, as well as its geographic area that grew to include the whole continent, expanded and evolved, contributing also to the evolution and development of the planned volume. Consequently, additional contributors were invited to join and were brought in with their respective contributions, all of which resulted in the new title of the volume: *Changing Faces of Federalism: Political Reconfiguration in Europe from East to West*. Although the membership of the group fluctuated constantly throughout the duration of the project, and a number of scholars participated only in the conferences, thereby extending the network, the core was stable and included (listed in alphabetical order): Rainer Arnold, András Bozóki, Bruno de Witte, Orsolya Farkas, Anna Gamper, Kristian Gerner, Vojtech Mastny, David M. O'Brien, Sergio Ortino, Francesco Palermo, Peter Pernthaler, Giovanni Poggeschi, Peter H. Russell, Philippe C. Schmitter, Gabriel N. Toggenburg, José I. Torreblanca, Jens Woelk and Mitja Žagar whose papers were presented at the conferences and submitted to members of the group for their comments. These conferences and scholarly debates provided several comments, reactions, additional ideas and recommendations that assisted with the continuous evolution and development of contributions, while their authors indicated that the comments and suggestions of the editors were also useful when completing their contributions.

Considering the evolution and expansion of the project, upon the suggestion of the editors, the group agreed that it would be desirable to present the almost completed contributions to the book *Changing Faces of Federalism* prior to its publication to:

a selected wider audience of scholars, journalists, and public officials from different parts of Europe and North America. The Institute for Advanced Studies in the Humanities (*Kulturwissenschaftliches Institut*) in Essen, Germany, provided the forum for this discussion in June 1998. The meeting in Essen, which resulted in the final revisions of the manuscript, was cosponsored by the European Academy of Bolzano.<sup>6</sup>

Although the first version of the almost completed manuscript was prepared by the beginning of 1999, it took an additional five years before the book was published. As there were some problems with the initial publisher, there was even

6 Ortino, Mastny and Žagar, *supra* note 1, p. 2.

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some doubt if the project could be completed successfully. In that period of despondence, Sergio and I continued to encourage the members of the group and searched for alternative solutions. Although a few authors considered publishing their contributions in scholarly journals or other edited volumes, we did not give up. After two-and-a-half years of stalemate we managed to find a new publisher that immediately became involved in the editorial work and actively participated in the process of completing the manuscript. In the meantime, the communication and scholarly debate among the members of the network continued and intensified, at least sporadically, influenced by contemporary developments. Simultaneously, the network grew with the inclusion of new, particularly younger, scholars and a few new authors were invited to write contributions to our book that would reflect upon contemporary developments and circumstances. The manuscript contributions continued to evolve, develop and expand in permanent coordination with the publisher, Manchester University Press. Their excellent editors also participated in and contributed to our scholarly debates that also resulted in the further development of all contributions. Considering the time that had elapsed since the completion of contributions, the relevant developments in Europe and changed circumstances, all authors were invited to update and revise their contributions prior to publication, which all agreed to do. Consequently, in the beginning of 2004 we produced a revised and updated manuscript that included and addressed recent developments and the contemporary situation as well. Sergio, with his team of colleagues at the European Academy of Bolzano, and I, with my assistants at the Institute for Ethnic Studies in Ljubljana, coordinated this process and individual activities, while Vojtech, who in the meantime had returned to the US, helped us occasionally.

As mentioned, our occasional meetings within diverse projects, particularly my frequent trips to Bolzano and Sergio's occasional visits to Ljubljana and the Institute for Ethnic Studies (IES) in the late 1990s and in the early 2000s in the context of editing our book, provided opportunities to discuss some scholarly and other topics thoroughly, exchange – often different and sometimes opposing – views and opinions, work together and socialize, thereby developing our personal bond of friendship. In time we came to know each other's spouse, and our spouses, Laura and Irena, then met occasionally as well. All these facts gave our cooperation and friendship additional, personal dimensions that also influenced our – often passionate – discussions on federalism.

#### **4. The Present and Future of Federalism in the Period of Transition**

Not surprisingly, our discussions during the initial meetings focused on the elaboration of the project on the applicability of federalism and federal models, or at

least certain segments there of in the post-communist transition of the countries of central and Eastern Europe, as well as in interstate relations in Europe, particularly in the European integration processes. At the time, all central and Eastern European countries expressed their desire to join the EU, which started to formulate its enlargement strategy, known as the Eastern Enlargement, and we wondered if these processes could give a fresh impetus to the idea of a federal Europe. We knew that this and the consequent enlargement would not transform the existing intergovernmental nature of the integration into a federal entity, at least not in the short term, as national governments and the people in many Member States continued to reject the federal transformation. My joke was that, in the eyes of opponents and sceptics, when it came to the future development of the EU, federalism remained an unacceptable 'F' word. In those discussions, of course, we could not have ignored federalism, historical federal experiences and contemporary federal arrangements in Western Europe and in North America. In this context, Sergio was particularly interested in Italian domestic developments, particularly the possibility of introducing federal reform. He saw Italy as a plural and diverse society, a state in which regions are rather different, and believed that the best alternative to the current (and to a large extent inadequate) unitary arrangements would be a federal transformation of the country. Consequently, as a scholar and (social) activist he argued for federal reform in Italy and suggested that different approaches and models were possible, although he particularly advocated functional federalism. He also wrote extensively about those issues.<sup>7</sup> Sergio was very critical of unitarism and centralist approaches and policies in diverse societies. He did not agree with those who at the beginning of the 1990s expressed secessionist claims in Italy. He criticized proposals for loose confederal arrangements promoted particularly within the Northern League (*Lega Nord*) that were designed to mask their actual and declared goal: the full independence of the north of Italy as the Republic of Padania. He saw these proposals as a possible threat to the territorial unity of the Italian republic. In addition, the fact that the majority of the population in the north rejected these radical proposals, fearing their possible negative political, social and economic consequences, gave Sergio some hope that alternative and adequate solutions would be agreed upon

7 At that time Sergio intensively studied federalism, including federal alternatives for Italy, and published extensively about those issues, see, e.g.: S. Ortino, *Ordinamenti costituzionali federative* [Federal Constitutional Regulations] (Cedeur, Firenze, 1990); S. Ortino, *Introduzione al diritto costituzionale federativo* [Introduction to Federal Constitutional Law] (Giappichelli Editore, Torino, 1993); S. Ortino, *Per un federalismo funzionale* [For a Functional Federalism] (Chelli Editore, Torino, 1994); S. Ortino, *Diritto costituzionale comparato* [Comparative Constitutional Law] (il Mulino, Bologna, 1994); S. Ortino, 'Regionalismo e federalismo. Il punto su un dibattito' ['Regionalism and Federalism: An Item for a Debate'] (1996) CCXVI/4 Archivio Giuridico, pp. 471–481.

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and introduced, possibly in a form of federal reform, which he saw as the best alternative. His view was consistent with our common opinion that all contemporary complex and regionally and territorially diverse and/or divided societies required flexible administrative and political arrangements that could be achieved optimally by the application of different federal solutions and models, and possibly by the introduction of specific combinations of those models and/or at least by the combinations of their segments.

Consequently, Sergio, Vojtech and I, as well as other members of the group, agreed that federalism and federal arrangements, as well as regionalism, were attractive and important alternatives not just for states and regions in central and Eastern Europe in the post-communist context, but also for countries and integrations in the West, particularly in Europe and North America. Considering our position, the evolution and expansion of the scope of our project and the invitations to new colleagues to join the group were logical and necessary to address other relevant case studies, particularly those in the West.

Regional autonomies, especially as an efficient mechanism of minority protection and federalism in general and particularly in Italy, became and remained important research topics and focuses of EURAC.<sup>8</sup> They were also central topics

8 See, e.g., Europäische Akademie Bozen [European Academy Bolzano/Bozen] (eds.), *Die Südtiroler Autonomie in europäischer Perspektive: Beiträge der Tagung zum 25. Jahrestag des Inkrafttretens des neuen Südtiroler Autonomiestatuts, 31. Jänner 1997, Schloß Maretsch, Bozen/L'autonomia altoatesina nella prospettiva europea [The South Tirol Autonomy in the European Perspective: Contributions at the Celebration of the 25th Anniversary of the New South Tirol Autonomous Statute, 31 January 1998]* (Arbeitshefte/Quaderni, 01) (Europäische Akademie Bozen, Bozen, 1997); M. Magliana, *The Autonomous Province of South Tyrol: A Model of Self-governance?*, Quaderni No. 20 (Europäische Akademie Bozen, Bozen, 2000); J. Marko, S. Ortino and F. Palermo (eds.) *L'ordinamento speciale della Provincia autonoma di Bolzano [Special Ordinance of the Autonomous Province of Bolzano]* (CEDAM, Padova, 2001); J. Marko, S. Ortino, F. Palermo, L. Voltmer and J. Woelk (eds.) *Die Verfassung der Südtiroler Autonomie: Die Sonderrechtsordnung der Autonomen Provinz Bozen/Südtirol [The Constitution of the South Tirol Autonomy: Special regulation of the Autonomous Province of Bolzano/South Tirol]* (Nomos, Baden-Baden, 2005); Sergio Ortino, *Auf dem Weg zu einem neuen Nomos der Erde: Beiträge; (1996-1997) [On the Way to the new Nomos of the Earth: Contributions (1996-1997)]*, Quaderni No. 5 (Europäische Akademie Bozen, Bozen, 1997); S. Ortino and P. Pernthaler (eds.) *La riforma costituzionale in senso federale: Il punto di vista delle autonomie speciali; workshop Accademia Europea di Bolzano, 6.12.1996/Verfassungsreform in Richtung Föderalismus [Federal Constitutional Reform: Special Autonomies]* (Regione autonoma Trentino-Alto Adige, Trento, 1997); F. Palermo, E. Alber and S. Parolari (eds.) *Federalismo fiscale: Una sfida comparata [Fiscal Federalism: A comparative study]* (Cedam, Padova, 2011); F. Palermo, R. Hrbek, C. Zwillling and E. Alber (eds.) *Auf dem Weg zu asymmetrischem Föderalismus? [On the Way to Asymmetric Federalism]* (Nomos, Baden-Baden, 2007); F. Palermo, C. Zwillling and K. Kössler (eds.) *Asymmetries in Constitutional Law: Recent Developments in Federal and Regional Systems* (Eurac Research, Bolzano, 2009); P. Pernthaler and S. Ortino (eds.) *Europaregion Tirol: Rechtliche Voraussetzungen und Schranken der Institutio-*

Mitja Žagar

of the discussions that Sergio, his younger colleagues at EURAC and I continued throughout the 1990s and in the early 2000s. In this period we used international scholarly conferences and other events as key opportunities to meet and intensify our discussions, while at that time my occasional visits to Bolzano and EURAC also started. This practice evolved into my regular visits to, and permanent intensive cooperation with, EURAC, particularly between EURAC and IES, cooperation that in the fields of human rights, protection of minorities, integration, regionalism and federalism continues successfully to this day.

## 5. Historical Transformations of Federalism

It is impossible to study, understand and explain the present and predict the (likely) future of social phenomena and societies without knowing and understanding the history and historical evolution of the respective social phenomena, relevant social circumstances and situations in certain epochs, in which those developments took place. Consequently, in our discussions on federalism we paid special attention to the historical origins of federalism, as well as to particular federal developments, models and practices in Europe and worldwide. We discussed the historical roots of federalism in the period of antiquity as well as medieval thoughts and sources. We paid special attention to different Christian theological discourses and the concept of subsidiarity as well as Dante's ideas and concepts of federal union. We studied the development and evolution of the Hanseatic League/Union (Hansa) as a specific, predominantly trading union with its political and administrative dimensions and compared it with the Unions of Arras and Utrecht. Special attention was paid to federal ideas and experiences from Central Europe and the Baltic region, particularly experiences of the Polish–Lithuanian Union. In the context of global developments, we were analyzing the American confederation, federalist debates, particularly the Federalist Papers,<sup>9</sup> federal transformation and the establishment of the United States of America, as well as other federal experiences in North America. In Europe we paid special attention to the German Confederation – German Union (*Deutscher Bund*), the confederal transformation of the Habsburg Empire into Austria-Hungary. In post World

*nalisation; Expertengespräch, Europäische Akademie Bozen, 22.11.1996/ Euregio Tirol [Euro-Region Tirol: Legal Presumptions and Frameworks for the Institutional Arrangements]* (Autonome Region Trentino-Südtirol, Trient, 1997); J. Woelk (ed.) *Federalismo fiscale tra differenziazione e solidarietà: Profili giuridici italiani e comparati [Fiscal Federalism between Differentiation and Solidarity: Italian and comparative legal profiles]* (Eurac Research, Bolzano, 2010).

9 See: A. Hamilton, J. Madison and J. Jay, *The Federalist Papers*, ed. by C. Rossiter, introd. and notes by C.R. Kesler (Signet Classic, New York, 2003).



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War II period we discussed federal models and experiences of the Soviet Union, Czechoslovakia and Yugoslavia (that were described as Communist federations) as well as recent developments in Western Europe such as the federal reforms and transformation in Belgium, etc. It was always a pleasure to discuss these issues with Sergio and Vojtech,<sup>10</sup> whose encyclopaedic knowledge and profound understanding of history, historic confederations and federations in European countries, as well as globally, added value to our reflections. We tried to address specific cases in the context of their specific historical time, social situations and circumstances, considering also the spirit of the epoch in our interpretations of those specific developments and in considering their possible relevance for contemporary and future circumstances and trends of development. We were aware that we could not use the present-day yardsticks to measure and evaluate historical concepts and actual past federal experiences. Also, we took into account differences in our interpretations influenced by our personal experiences and social conditions, particularly by our socialization, views and values. Consequently, we knew that any generalization of our findings and interpretations – except for the most abstract ones – was hardly possible and that we needed to treat every specific historical situation and case as an individual case, *sui generis*. In other words, although all historical and contemporary federations and federal experiences worldwide share certain common characteristics and similarities that allow for a classification, each practical case is very different from all others and can only be interpreted in a specific social and historical context. It is possible, however, to learn from specific historical cases, practices and experiences and to utilize them – adequately adapted to the specific situations and circumstances, considering differences and particularities, as well as their similarities and communalities – in other environments or at least predict some consequences and possible outcomes of the adoption and application of certain solutions, measures and/or models in those environments.

In our conceptual and theoretical discussions over the years, Sergio and I spent hours and hours discussing a few specific historic cases, particularly the confederal experiences and normative arrangements of the American confederation and its federal transformation, the German confederation, Austria-Hungary and the former Yugoslavia. The central topics of these discussions were the concepts, definitions and interpretation of confederations and federations and their possible scholarly and political implications. The reason for these discussions

10 See, e.g., V. Mastny, 'The Historical Experience of Federalism in East Central Europe' (1999) 14 *East European Politics & Societies* 1, pp. 64–96; V. Mastny, 'The Historical Experience of Federalism in Eastern and Central Europe', in S. Ortino, M. Žagar and V. Mastny (eds.) *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West* (Manchester University Press/Palgrave, Manchester/New York, 2005), pp. 21–46.

was simple: although we agreed on the majority of topics related to federalism, we had slightly different views on the definitions and historical cases of confederations. We recognized that different views were possible, and easily understood and accepted each other's positions. Accidental bystanders might have been bored by those discussions and might have not seen their point; however, to us it was a specific pleasure and challenge to address these issues and to tease the other with new arguments. Simultaneously, this was not just an academic debate, but one that included our personal experiences and had several practical implications and consequences; it was directly applicable also in our scholarly, consultancy and political work.

We agreed that all social phenomena and concepts, including confederations and confederalism, as well as federations and federalism, were complex and dynamic processes that constantly evolved and changed over time. However, we also recognized that frequently we only knew about certain cross sections, contents and dimensions of those complex and dynamic phenomena at a given time. Often, even scholars forget that fact and describe those phenomena as static situations and structures, given facts or, rather, steady processes. In their attempts to establish principles and theories, considering specific cases that they are studying and know well, scholars are tempted to generalize their findings even when this might be questionable. Frequently Sergio and I – when we tried to generalize our findings from specific case studies and discussed their possible applications in different environments and situations – realized that we were caught in the same trap. Specific cases might be just what they are: specific case studies. Additionally, each case – actually each and every social phenomenon – is unique. Of course, those specific case studies can be compared with other cases and, based on those comparisons, differences and communalities might be demonstrated that can serve to establish and develop concepts and classifications, as well as to detect trends of development. However, those concepts and classifications should not be confused with the realities – not even with a specific reality that a certain concept and/or model tries to describe. At most they can be considered more or less adequate reflections of those realities. Consequently, the main tasks, analytical functions and added value of those concepts, classifications, theoretical models and theories are that they are the necessary tools that can help us observe, describe, analyse, understand and interpret different specific realities, phenomena and processes, as well as their interplay.

A few central theoretical questions that constantly (re)appeared in our discussions and were addressed from different perspectives were rather abstract and simple, but there were important ones. What were historical confederations? Were they composed states or unions of independent states? How and when did they evolve and transform? How did the concepts of confederalism and specific

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cases of confederations influence the development and evolution of federalism, as well as different federations? How do these considerations and (theoretical) concepts apply to the EU, its historical development and evolution?

Our views and concepts evolved over time and seemed to converge slowly. However, our basic positions on, and different perceptions of, confederations and confederalism remained the same. On the one hand, Sergio believed that the majority of historical confederations actually at least very much resembled states, while in some cases they could be considered a specific form of composed states. On the other hand, my perceptions were conventional. I insisted that none of the historical confederations was a sovereign state. Although certain competencies and powers might have been transferred to the confederal level, member states preserved their sovereignty. Consequently, confederations were specific unions of independent and sovereign member states established by confederal treaties. Colloquially called confederal constitutions,<sup>11</sup> in their nature these treaties were international agreements concluded by the member states of the respective confederation. These treaties determined confederal institutions, their competencies and procedures of decision-making designed to protect and realize the enumerated common interests of the member states. Although these institutions and their functioning resembled the institutions and functioning of sovereign states, they had more in common with modern international organizations. Following the theoretical concept of confederations, as well as the criteria for distinguishing (historical) confederations from federations and unitary states developed by Leonid(as) Pitamic,<sup>12</sup> I would consider these confederations as *co-states*.

Certain confederal arrangements in Europe, such as the personal unions of states reigned by the same monarchs as their common sovereign rulers, had already emerged in the medieval era, well before the pre-nation state era, survived transformations following the Peace Treaties of Westphalia and throughout their existence managed to preserve and manage incredible diversity within their borders. Although, the Holy Roman Empire (the Holy Roman Empire of the German Nation and its successor the German Union) and the Polish Commonwealth continued to exist for several centuries, Sergio, Wojtech<sup>13</sup> and I<sup>14</sup> agreed that usu-

11 As is the case with the *Articles of Confederation and Perpetual Union between the States*, frequently referred to as the Articles of Confederation and colloquially often called the American Confederal Constitution. (See, e.g., <[www.loc.gov/rp/program/bib/ourdocs/articles.html](http://www.loc.gov/rp/program/bib/ourdocs/articles.html)>, 7 January 2012.)

12 See, e.g., L. Pitamic, *Država [The State]* (Družba sv. Mohorja, [Celje], 1927), particularly pp. 126–174; or L. Pitamic, *A Treatise on the State* (J.H. Furst Company, Baltimore, 1933).

13 See, e.g., Mastny (2005), *supra* note 10, pp. 21–46.

14 See, e.g., M. Žagar, 'Pandora's Box: Federalism in Central and Eastern Europe – The Applicability of the Federal Model(s) in the post-communist Europe' in A. Pieńkowska (ed.) *O nowy kształt Europy: XX-wieczne koncepcje federalistyczne w Europie Środ-*

ally historic confederations were specific temporary and transitory social, administrative and political arrangements in the process of the development and evolution of modern states. Depending on specific circumstances and developments, the respective historical confederations transformed into federations (e.g., the federalization of the American and the Swiss confederations) or into unitary states (e.g., the Netherlands), while in other cases they disintegrated into independent sovereign states (e.g., the states established after the disintegration of Austria-Hungary).

Historical confederations, particularly their normative arrangements and practices, contributed to the development of modern federalism and addressed many issues that remain relevant for the functioning and development of federalism and international integration processes today. Each confederation contributed to these developments in different ways, but also to a different extent considering geographic proximity and particularly political importance in different social environments. Frequent problems that influenced their transformations and collapses were their inability to find the right balance between the centre and periphery, centralist and decentralist tendencies, as well as between the member states and confederal levels, the lack of cohesion, the inability to fight hegemonic tendencies and desires to dominate, the inadequate management of ethnic/national and other diversities, as well as contemporary international tensions and pressures. Frequently, their weaknesses were also democratic deficit and the lack of legitimacy in the member states and confederations that continued to exist even upon the formal introduction of the principle of popular sovereignty that it was hoped would enable and start the process of their democratic transformation into constitutional parliamentary monarchies or republics. Still, worldwide federalism and federalist ideas were considered as possible means for national liberation, as well as guarantees for equality of diverse nations and distinct communities within a common administrative framework.

Consequently, we paid particular attention to the successful federal reforms and democratic transformations in confederations, as well as to the failure to federalize the Habsburg Monarchy that until its dissolution remained mainly a hegemonic form of government. The introduction of dualism and the creation of Austria-Hungary in 1867 were mere excuses and responses to increasing internal problems and an elite power-sharing arrangement with the Magyars (Hungarians), one of the discontented nationalities whose cooperation was considered instrumental for the preservation of the Monarchy. For these reasons, Vojtech described this reform as: 'A response to the defeat of Austria by Prussia in the war

*kowo-Wschodniej i ich implikacje dla dyskusji o przyszłości Europy [New European Structures: 20th Century Federal Conceptions in Central-Eastern Europe and their implications on the discussions on the past in Europe]* (Instytut Europy Środkowo-Wschodniej, Lublin, 2003), pp. 389–406.

of 1866, the quasi-federal reorganization of the Habsburg monarchy, was an unhappy by[-]product of the process of German unification, which excluded East Central Europe. It was a constitutional arrangement difficult to imitate and unworthy of imitation.<sup>15</sup>

## 6. Federal Models and Perspectives

In Sergio's and my view, confederalism remains important today and is particularly useful to describe and analyse different international organizations, such as the United Nations, as well as international economic and political integrations and associations, for example, the EU. I would say that international organizations, as well as the Community of Independent States (in the territory of the former Soviet Union), could be considered modern-day confederations. Is the EU also a specific case of a modern-day confederation? I could answer that in many ways it is, but I add that it is above all an international and supranational union, an international integration *sui generis*. Although several federal elements can be found in the EU, it has not yet crossed the federal Rubicon. Its normative foundations and framework are international treaties that cannot be confused with a federal constitution that establishes a federation as a composed sovereign state. Consequently, the EU – at this stage of its development – cannot be considered a federation. Sergio considered it a specific form of confederation with certain federal characteristics. However, I would argue that the current normative arrangements, particularly the existence of the European Parliament (EP) that provides for a direct political representation of the people, the introduction of EU citizenship, as well as the competences and powers of the EP and European Commission that in addition to the European Council may take decisions that are directly binding on the Member States and their citizens, do exceed the traditional concepts and models of confederations.

Being passionate European federalists, Sergio and I desired and suggested the federal transformation and reform of the EU. Of course, such ideas and proposals are rejected by the opponents of federal reforms and the defenders of (national) sovereignty of the Member States. Consequently, alternative proposals, scenarios, concepts, types of federalism and federal models, as well as effective practical solutions – hopefully acceptable to all – need to be developed and applied in order to ensure the independence, sovereignty and adequate influence of Member States while simultaneously enabling a closer and more effective union. We tried to contribute our share to this important task and proposed a few possible approaches.

15 See, Mastny (2005), *supra* note 10, p. 26.

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In his scholarly work and in our discussions on possible approaches Sergio developed and offered his concept of functional federalism<sup>16</sup> that offers a possible alternative for the future development and transformation of the EU. This concept and model are built on a (con)federalist approach and the model/concept of a federative state defined in the following way:

A federative state is a political order founded on a permanent, indissoluble agreement, freely entered into by the contracting parties, created for the purpose of pursuing common ends. This political order is composed of a community body which came into being *ex novo* in consequence of agreement, and of political entities with their own governments and equal judicial status with respect to each other. In giving rise to the federative agreement, these political entities modified their original constitutions to a substantial degree.<sup>17</sup> This form of state does not differ from confederal, federal or regional states in degree of devolution and autonomy in legislative, administrative and juridical affairs, but in the specific principles that define its structure and establish its operation. Essential elements of the federative state are the homogeneity of the participating members and the federative legitimacy of the joint bodies.<sup>18</sup>

The federative state enables the preservation of each member's sovereignty (political identity) through the decision-making process of the common bodies. In Sergio's view the federative state is a sovereign political order to which the member states surrender a part of their sovereignty, based on their mutual and perpetual agreement. More precisely, the member states transfer part of their powers and sovereignty to the common (federative) institutions and jointly assert their right of sovereignty in matters reserved to the common institutions. The principle of sovereign equality requires that there should be provision for equality of votes among the member states' representatives in those common federa-

16 In defining his functional federalism Ortino follows the meaning of functionalism as defined by David Mitrany, a concept that he started to develop in the 1930s and 1940s. See, e.g., D. Mitrany, *A Working Peace System* (Oxford University Press, Oxford, 1943); D. Mitrany, *The Functional Theory of Politics* (St Martin's Press, New York, 1976).

17 For further details on the questions dealt with in this section, see: S. Ortino, *Diritto costituzionale comparato* [Comparative Constitutional Law] (il Mulino, Bologna, 1994).

18 S. Ortino, 'Functional Federalism between Geopolitics and Geo-economics', in S. Ortino, M. Žagar and V. Mastny (eds.) *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West* (Manchester University Press/Palgrave, Manchester, New York, 2005), p. 280.

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tive institutions, and in taking the most important decisions for the unanimous consensus of all member states of the sovereign body.<sup>19</sup>

Sergio believed that the model of a federative state as the basis for functional federalism provided relevant answers to 'one of the most important revolutions in the history of human organization: a space revolution'.<sup>20</sup> This revolution – at its current stage in the era of globalization – demands a new organization and ordering of space characterized by three concepts and processes: micro-regionalism, macro-regionalism and global localization. We agreed that the current models of nation states based on principles of sovereignty and territorial unity that defined them as boundary nation states, including traditional federal concepts and models, described by Sergio as 'structural federalism', were inadequate considering the challenges of the space revolution, particularly in the context of (international) integration processes. As Peter H. Russell points out, the traditional 'concept of sovereignty does not work well in these federalizing times. It survives more as an ideology than as a useful tool of juridical or political analysis'.<sup>21</sup>

However, regardless of the need to go beyond traditional sovereignty, it remains unlikely that the traditional and absolute concept of sovereignty will be overcome or even abolished any time soon.<sup>22</sup> Considering the needs and nature of the ongoing integration processes in the world, we might expect a certain evolution and transformation of sovereignty, so that it will become more flexible and better adjustable to changing circumstances and the demands of increasing cooperation and integration at all levels (from local and subnational, regional and national, to international).

As a possible concept and model that can contribute to further European integration and give it federal substance, Sergio's functional federalism is:

19 See, e.g., *ibid.*; S. Ortino, *Introduzione al diritto costituzionale federativo* [Introduction to Federal Constitutional Law] (Giappichelli Editore, Torino, 1993).

20 Ortino, *supra* note 18, p. 275.

21 P.H. Russell, 'The Future of Europe in an Era of Federalism', in S. Ortino, M. Žagar and V. Mastny (eds.) *The Changing Faces of Federalism: Institutional Reconfiguration in Europe from East to West* (Manchester University Press/Palgrave, Manchester, New York, 2005), p. 11.

22 Sovereignty as an absolute concept (in its different variations, such as dual sovereignty in the classic conception of federal government, shared, competing and divided sovereignty or pooled sovereignty within supranational organizations and governmental orders) and principle remains the basic foundation of contemporary nation states that are unwilling to give it up. See, e.g., D. Elkins, *Beyond Sovereignty* (University of Toronto Press, Toronto, 1995); F.H. Hinsley, *Sovereignty*, 2nd edn (Cambridge University Press, Cambridge, 1986); M. Žagar, 'National Sovereignty at the End of the Twentieth Century: Relativization of Traditional Concepts; The Case of Slovenia' in B. Bučar and S. Kuhnle (eds.) *Small States Compared: Politics of Norway and Slovenia* (Alma Mater, Bergen, 1994), pp. 235–252;

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a federalism in which the territorial extension as well as the jurisdictions of the supranational, national, and local authorities are subjected to change according to the situations. The legal-institutional outcome is an intermediate solution, combining elements of structure (classical federalism) and the logic of action (functionalism) apt to organize the government both along the line of specific ends and needs, and on the basis of a set constitutional division of rights and powers.<sup>23</sup>

Sergio, in this context, expected that:

the principle of subsidiarity will substitute the principle of sovereignty as [a] fundamental element of the new legal orders. In this new world order, sovereignty will be subject to a general deconstruction through processes of downsizing, devolution, and specialization. Old and new entities will emerge exercising some but not all the characteristics we have come to associate with the traditional nation-state. Autonomy instead of sovereignty will be the fundamental principle of organizing political communities. In this multidimensional world no organization can monopolize all the dimensions of sovereignty.<sup>24</sup>

Such a multidimensional world order and the successful management of all existing diversities will require different territorial and non-territorial, often multi-level, approaches to and units of governance that will be interconnected and interdependent, as well as being adequate structures of government at all levels. Every entity, at every level, shall have some autonomy to express their specific characteristics and interests and should be able to realize their respective interests, while simultaneously it must be connected with the rest of the world and integrated in it.

Thus, functional federalism, on the basis of subsidiarity and asymmetric principles, will be capable of redesigning and reshaping, in a fairly short time and in a lasting way, the present global order in connection with the great tectonic changes of this era. One must by no means think that, in the global process of constitutional changes, such changes take place once and for all. But, again, it is important to stress the fact that the starting point of this institutional revolution towards a

23 Ortino, *supra* note 18, p. 290.

24 *Ibid.*



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new space order will be the geo-economic micro-region, the new emerging fundamental structure of our epoch.<sup>25</sup>

Traditional federalism, federal models and federations were designed to address the existence of territorial and other differences and divisions within states by the establishment of composed states and their respective federal structures. However, those predominantly symmetric and rather rigid arrangements, structures and models often proved inadequate and unable to reflect, regulate and manage the actual asymmetries and diversities. Consequently, Sergio and I agreed fully that, in comparison with traditional federalism, functional federalism was better able to address all kinds of diversities and asymmetries that are common characteristics of every modern plural society, including all federal polities.<sup>26</sup> Improved and increased communication, transport, trade and cooperation at all levels, ever greater global interdependence, increasing mobility of people and constant internal and international migrations, globalization and several other factors further contribute to new and growing diversities and asymmetries in dynamic and complex societies that continue to evolve.<sup>27</sup> These social developments demand constant exploration, development and implementation of new approaches to, and models of, inclusive and effective diversity management as necessary components of continuous, stable, just, equal, inclusive and sustainable development. Among these diverse approaches, concepts and models of diversity management, different concepts and models of federalism, particularly those that can reflect relevant asymmetries adequately, as well as regionalism, might be useful, particularly in the context of integration processes. They shall contribute to the open, inclusive and democratic arrangements that consider every individual, citizen or non-citizen, diverse individual and collective identities, including ethnic and national identities. Reflecting common and diverse interests (even when they are or seem to be conflicting) diversity management strategies and arrangements shall allow for the inclusion of all social, economic and political entities, associations and organizations (including trade unions, political parties, movements and other actors of civil society), geographic entities, levels and forms of local (self-)government, regions, nation states, but also international/supranational organizations and governmental orders, etc.

25 *Ibid.*, p. 291.

26 See, e.g., B. De Villiers (ed.) *Evaluating Federal Systems* (Martinus Nijhoff/Dordrecht/Juta & Co., Kenwyn/Cape Town, 1994).

27 For more on some dimensions of diversities in Europe, evolving societies and identities see, e.g., D. Dunkerley, L. Hodgson, S. Konopacki, T. Spybey and A. Thompson, *Changing Europe: Identities, Nations and Citizens* (Routledge/Taylor & Francis Group, London/New York, 2002).

Reflecting upon the formal normative and institutional structure and the performance of historical and contemporary federations, as well as the current state and future development of federations and international integrations, de Russell rightly points out that:

it is difficult to think of a federal system which is perfectly symmetrical both in design and operation. The world has not known a federation in which all of the constituent units are equal both formally in law as well as in actual power and influence. But if some asymmetry is an inescapable feature of the federal condition, however, it is also the source of some of the most difficult issues confronted by the citizens and states of a federal polity. These issues often raise what are in effect important questions of political justice. Should member states that have greater autonomy locally have less power at the centre? Should states that do not accept all of the mutual obligations of a federal union be eligible for all of the benefits that flow from that union? Which ethnic, linguistic or cultural minorities merit constitutional recognition and protection, and which do not? How far should equality of power for individual citizens of the federal community give way to equality of power for each of its constituent units regardless of size? What is the obligation of wealthier member states to transfer wealth to poorer members or regions of the federal community?<sup>28</sup>

These questions are important not only for federations, but for every state in which there are richer and poorer, smaller or bigger or otherwise unequal geographic areas, regions, distinct communities or units, as well as for international integrations – even if they are not federal in their nature. They are also becoming more pressing within the enlargement process of the EU as in this millennium new members were, and will be, significantly poorer than the existing members. Particularly in a period of crisis it is an important issue to agree how far the solidarity among Member States and mutual assistance can and will go. Among other important issues regarding the future development and enlargement of the EU – such as the definition of its potential outermost external frontiers, decisions regarding the inclusion or exclusion of prospective candidate countries or even the exclusion of Member States, determination and execution of normative, administrative, institutional and political solutions and arrangements that stimulate integration, discussions on the powers and competences of the EU institutions, as well as a firmer and stronger union, etc. – the questions of possible federal re-

28 Russell, *supra* note 21, pp. 17–18.

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forms, federalization and transformation of the integration into a true federal entity remain relevant.

Each state – actually every specific geographic and social environment – is a specific and unique case, at least in some ways. Consequently, each federation and federal unit is a specific and unique case, different from all other federations and other federal units. Within historical and contemporary federations, federal units differ in their territorial size, population and other geographical, social, demographic, economic, cultural, ethnic, political, etc., characteristics. When these differences are substantial, Charles D. Tarlton speaks of ‘asymmetrical federalism’. These differences can have an impact on specific interests of federal units that might conflict if they are (mis)used as the basis for social and/or political mobilization. If differences grow and conflicts escalate, this could lead to secessionist tendencies in distinctive federal units.<sup>29</sup> Discussing federal relations, Ivo D. Duchacek adds that the same constitutional treatment of all federal units regardless of existing differences could lead to different problems. Particularly bigger and more influential, economically stronger and more developed federal units could establish their domination over the federation and other federal units thereby putting them in a subordinate position despite the constitutionally guaranteed equality of all federal units. As mentioned above, several factors can contribute to new and growing asymmetries and diversities, to changes in the social and ethnic structure of the population and, consequently, to changing circumstances and conditions in a particular society. In federations such developments could result in ever-greater differences (increased asymmetries) and escalating conflicts that might endanger the very existence of a certain federation.<sup>30</sup> The challenge for politicians and all political systems, therefore, is to develop different formal and informal mechanisms and procedures for the effective and sustainable management of diversity and asymmetries and for the prevention, management and resolution of potential crises and conflicts.

Considering these facts and needs, and particularly reacting to the growing social and political crisis in the former Yugoslavia in the late 1980s, I started to develop the theoretical model of asymmetrical federation. This theoretical model was an attempt to design a federal system and institutions that would reflect and address asymmetries and diversities that existed in societies. It was constructed in a way to enable the formal and actual recognition and expression, as well as

29 See C.D. Tarlton, ‘Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation’ (1965) 27 *The Journal of Politics* 4, pp. 861–874, especially pp. 868–870.

30 See I.D. Duchacek, *Comparative Federalism: The Territorial Dimensions of Politics*, Modern Comparative Politics Series (Holt, Rinehart and Winston, Inc., New York/Chicago/San Francisco/Atlanta/Dallas/Montreal/Toronto/Sydney/London, 1970), pp. 277–294; I.D. Duchacek, *The Territorial Dimension of Politics Within, Among and Across Nations* (Westview Press, Boulder, 1986). See also *supra* note 14.

effective management, of all existing and socially relevant asymmetries and diversities within the federal political systems at all levels. The theoretical model of asymmetrical federation designs approaches and a flexible normative, institutional and organizational framework that enable every federal unit to pursue and realize its specific and common interests and to adapt the existing and constantly evolving (dynamic) constitutional system while considering specific and common needs.<sup>31</sup> The specifics of this theoretical model are that:

- It is based on the respect of general and commonly agreed constitutional principles.
- The constitution lists a limited number of issues and fields (e.g., the economic and monetary system, the foreign and defence policy, etc.) that are within the exclusive competences and powers of the federation. The constitution also determines decision-making procedures and the required majority (e.g., the weighted majority or consensus) for the adoption of decisions. These decisions and the federal legislation in these fields are binding for all federal units and individuals (the population of the federation).
- It establishes a system of asymmetrical decision-making that can result also in the asymmetrical legal and constitutional systems within a particular federation.
- It allows for different circles and clusters of federal units within a particular federation that might transfer different competences and powers to the federation and federal institutions; so, colloquially, we could speak of federalism of 'different speeds' (or different intensity) whereby different federal units can transfer different (as well as different amounts of) competences and powers to the federation.
- For the federal units that agree to transfer certain competences and powers to the federation and its institutions, the federal decisions in these fields are binding. In other words, apart from the exclusive federal competences, each federal unit will respect and follow only the decisions that were adopted or agreed upon by that federal unit.

If traditional federal models are based on the fixed division of competences and powers (between the federal units and the federation) determined by the federal constitution, the theoretical model of asymmetrical federation is a dynamic and flexible system. It establishes the normative framework, as well as mechanisms, channels, institutions and procedures for continuous renegotiation and redistribution of competences within the federation, thereby contributing to the inclusive, asymmetrical, peaceful, democratic, (hopefully) effective and sustainable regulation and management of relations between the federation and federal units,

31 Žagar, *supra* note 3, pp. 337–397.

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among federal units and, in some cases based on the constitution and legislation, among formally recognized distinct communities<sup>32</sup> within a federation. Considering the circumstances in which this model was elaborated, as well as my deep interest in diversity management, it should not be surprising that the model of asymmetrical federation was designed as a mechanism for the prevention (or escalation), management and resolution of crises and (social, ethnic, etc.) conflicts.

Consequently, this theoretical model does not reflect just the present asymmetries and diversities, but it should – with its dynamic and flexible nature and design – be able to react to these and future asymmetries and diversities and translate them into a functional political system. This is possible due to the fact that in addition to the commonly agreed competences, based upon the agreement and decision of the participating federal units, the respective federal institution could perform different functions and competencies for different federal units or groups of federal units. If the federal units authorize the federation and certain federal institutions to exercise certain common functions for them, they have to assure that there are the necessary organizational structure and financial resources for those tasks at the federal level. They also have to determine decision-making procedures and the framework of their cooperation in a certain field. Federal units, which do not adopt certain decisions and authorize the federation to perform certain common functions for them, are not bound by these decisions and could arrange and perform these functions and competences by themselves. However, those federal units that do not participate in and are not bound by certain asymmetrical arrangements might be required to participate in a specific budget established to finance those arrangements and tasks – particularly if they are more developed than the federation's average, following the principle of solidarity.

Initially, Sergio was not too impressed by the theoretical models of asymmetrical decision-making and asymmetrical federation and considered them drastic measures designed to address the extreme situation and crisis in the former Yugoslavia. He considered those models too loose, possibly even looser than historical confederal arrangements, and feared that their introduction and functioning would not provide for the necessary cohesion in a federation. Consequently, the model of asymmetrical federation was, in Sergio's view, tool for, and a likely transitory arrangement in the process of, the disintegration of a federation. An additional criticism was that the models of asymmetrical decision-making and

32 Such distinct communities that should receive constitutional and/or legal recognition in order to be included formally in the system, and decision-making might include specific ethnic, cultural, linguistic, religious, social, etc. communities and groups that live in a particular federation. Those distinct communities can participate in diverse social and political processes, particularly within consultative bodies, while the formal constitutional and legal basis is required for their direct participation in political decision-making.

federation were just theoretical models, although certain approaches and elements of those models were implemented, at least partially, in some countries. However, when I pointed out that most federal concepts and models were actually and predominantly theoretical, which (at least to a large extent) applied also to his concepts and models of a federative state and functional federalism, Sergio agreed that the concepts and models of asymmetrical decision-making and federation, or at least certain segments thereof, might be useful for the management of diversity in federations. We fully agreed, however, that one of the main problems of different theoretical concepts and models is the lack of consensus and will to introduce them and put them into operation. Surely, there was no consensus for the introduction of asymmetrical federalism and decision-making in the former Yugoslavia. In addition, neither did the institution of the EU nor its Member States express much interest in those concepts and models. Unfortunately, the Italian state and its politics, and also the EU, did not show much interest in other federal arrangements and models or in proposals for federal reforms either. So, it remains the task of the federalists in Europe to promote federal approaches and solutions, particularly by pointing to their advantages, and to work towards a federal future of Europe and its individual states. Consequently, we agreed that our key tasks – both as scholars and European federalists (activists for federalism) – should be to present and promote the knowledge about federalism, its historical evolution and development, federal approaches, arrangements and solutions, historical and present-day federations, as well as international integrations that apply certain (con)federal approaches and solutions, particularly by showing their potential and their possible comparative advantages in addressing different social, cultural, economic and political issues and problems in complex and diverse contemporary societies.

## **7. Concluding Remarks**

Like many other scholars and social activists, Sergio and I realized that one of the hardest tasks would be to promote our regional/regionalist and federal/federalist ideas, concepts, models and proposals, including possible federal reforms at national and EU levels, as well as to make them attractive and to sell them to the general public and particularly to politicians, governmental and EU institutions. Although our positions were that there were no adequate alternatives to the regional and federal reforms and future within European integration processes, but also in several European states, usually – as was the case in the discussions on a European constitutional treaty, where a certain part of the public supported certain federal approaches, while the majority of governments did not

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like them – federal proposals and solutions were rejected. Rather than transforming the EU into the European federation, the prevailing intention was, and still is, to develop a specific international union, an entity *sui generis* that – regardless of its strengthening, particularly by establishing new EU institutions and increasing their competences – does not reduce or even replace the sovereignty of Member States.

Although we knew and recognized the reality, Sergio and I were rather disappointed with such developments. In our discussions and correspondence we continued to point out many weaknesses that we saw in the current arrangements, legislation, policies and political declarations at the national and European levels. Particularly, we stressed the inadequacy of current solutions and arrangements in addressing the current financial, economic and political crisis in the beginning of the 2010s and the major challenges of future development. Combining different elements of regional and federal concepts and models, both theoretical ones and the ones implemented in practice, we were trying to find the adequate and optimal combinations of those concepts, models and systems that would address any specific situation, the needs and interests of every specific environment, as well as of the broader frameworks, including the global level, and would provide an adequate tool for successful diversity management that we saw as the necessary basis for a stable, just and equal, effective and successful, balanced and sustainable development that adequately takes into account specific circumstances, considering also the broader contexts and frameworks. In this context our message is that there is no adequate alternative to the federal development and future of Europe.