In her book "On Revolution" Hannah Arendt, taking up the example of the American Revolution, hammers out how the question of new beginnings after revolutionary political breaks is closely related to the question of constitution building. Constitution building in Arendt’s perception of politics is more than releasing a set of articles which limit the power of the state and give fundamental rights to the individuals. Strictly speaking these rights don’t constitute the power of the people in a positive sense; they only guarantee protection against the abuse of power. The contribution of constitution building to political authority and power, is — according to Hannah Arendt — not a paper of rules and regulations but the capability of the people to set up a new political body and to constitute political freedom. It makes a difference, so Arendt, if the people give themselves a constitution or if a government gives a constitution to the people.

The following contribution starts with some theoretical reflections on the question of how polities gain legitimacy, and how we can value the role of founding acts or founding myths in this context. Secondly it takes a closer look at the history of the EU. What were the forming and uniting elements of the EU’s development, and what made the EU such a successful story? Finally, it moves to some of the current dilemmas of the European Union in creating a political identity to support its constitutional project. Here it focuses particularly on the attempt to declare the Holocaust a founding event that would help to create an overarching political identity beyond the institutional framework of the EU.

1. The Foundation of Polities

In the theory of political systems the legitimacy of polities generally relies on a set of efficient political institutions and autonomous subsystems, and their capacity to provide
public goods and to mobilize sufficient public support in elections. This functional perspective neglects, however, how polities gain legitimacy and collective identity beyond the mechanism of a procedural and efficient democracy. In this context the importance of founding acts and founding myths, two terms closely connected with each other, becomes an interesting issue. Political myths are narratives which bring about a collective identity beyond the social, cultural, and political fragmentation of a given community. Their character is fluid, and they are subject to a constant process of interpretation and reinterpretation. The extent to which political myths encompass elements of truth or lies does not matter — usually they encompass both. Important is their capacity to create a common WE-identity, to give meaning to the past and the future of a polity and to promise temporal continuity instead of the contingency of human existence and life. The term “We, the people,” for instance, is the symbolic representation of unity which doesn’t exist in reality but which is, nevertheless, a powerful and mobilizing force. In this sense political myths are unwritten charters of the social and political order of a polity influencing the consciousness and collective memory of people. "The emergence of a common political culture," the French philosopher of law, Jacques Lenoble, argues "is more than the abstract acceptance of universal principles. It is also the adoption of a narrative which creates identity. . . . The never-ending mutterings of the collective memory which accompany all our political decisions and impose loyalty on us, these mutterings of collective identity cannot be suppressed. On the contrary, they must become explicit in order not to be marginalized."¹

In contrast to the structure of archaic myths which refer to religious or cultural origins of a community and to a linear perception of time, modern political myths emphasize the interruption of the past, the emergence of a new beginning — initiated by collective action of people. In this respect, they rely on the belief of revolutionary breaks which lead to new agreements about the ethical foundation of the community or to a redefinition of the central values of a given polity. Interestingly, modern political myths have the capacity to transform the religious dimension of archaic myths into a

secularized form without abandoning their sacralized character. The history of the modern nation reveals that — in the genealogy of political generations — a sacred founding act remains a key point of identity until a new radical change creates a new beginning. In so far founding acts and political myths are the original sources of political identity and legitimacy. Also political power, as Hannah Arendt pointed out, is rooted in such new beginnings. "Power," as Arendt argues, "springs up whenever people get together and act in concert, but it derives from the initial getting together rather than from any action that then may follow. Legitimacy bases itself on an appeal to the past, while justification relates to an end that lies in the future."2 Liberal constitutionalists, she concludes, tend to treat a constitution like "a pudding," which one prepares by using certain recipes, and she cites Thomas Paine who said, "A Constitution is not the act of a government but the act of the people who constitute a government."3 Arendt’s republican interpretation of constitution building refers in a certain sense to the current efforts to reinvigorate the political founding of the European Union and the establishment of an European Constitution. Before analyzing these efforts it is, however, rather useful to sketch some of the cornerstones of the development of the European Union after World War II.

2. European Founding Myths

Even today we employ the Greek mythology in order to give significance to the idea of Europe beyond the reality of an administration and a set of supranational institutions. Europa, the daughter of the Phoenician King Agenor and mother of the famous Cretian King Minos, symbolizes the occidental origins of European culture. Politically, the European idea gained momentum for the first time during the Enlightenment. Philosophers of the Enlightenment, such as Immanuel Kant, developed the ethically based founding concept of an all-European order based on peace and law. However, the first serious attempts to intensify the European integration did not appear before the 1920s. Taking up the ideas of a broader pan-European movement, Aristide Briand, at

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3Hannah Arendt, *Über die Revolution* (München/Zürich: Piper, 1994) 188.
that time the French minister for Foreign Affairs, developed a model for a European federation at the end of the 1920s that failed to materialize. Finally, the idea of the integration of Europe received a new and strong impulse after the end of World War II. Several international associations, focusing on the idea of the "United States of Europe," formed the European Movement, in order to propel the political integration of Europe. Looking back at these origins of the EU today, it appears as if the vision of the "United States of Europe" was the result of the collective intention to overcome the heritage of two traumatic wars during the first half of the twentieth century. And indeed, this was undoubtly one of the driving forces when politicians in postwar Europe started to turn this vision into reality.

When Robert Schuman, the French Minister for Foreign Affairs, presented the plan for the establishment of a European Coal and Steel Community in May 1950 he said in a press-conference:

> Nearly five years to the day after the unconditional surrender of Germany, France is now taking the first decisive step towards the construction of Europe and is associating Germany in this venture. . . . Out of all this will come forth Europe, a solid and united Europe.4

We tend, however, to overestimate the ideational and idealistic motives of this founding story. Very conventional and even nationalistic motives were just as decisive as ideational intentions. For France which could not forget the trauma of the German occupation during the Nazi-era — the central question was how Germany’s military and political power could be limited in the future without destroying the capacity of Germany’s economy to provide the French industry with enough resources, particularly with coal and steel. One of the principles of the Schuman declaration emphasized: "Action must be taken immediately on one . . . decisive point: Franco-German production of coal and steel must be placed under a common High Authority."5 Before the founding of the Federal Republic of Germany became a fact in 1949 — particularly by the increased efforts of the US — the French government even tried to cooperate with the Soviet Union in order to come to an agreement about the exploitation of the

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5Schumann Declaration, see Fontaine 15.
German raw material. Only after this attempt had failed, did France start to change its strategy, presenting the Schuman plan which was inspired by Jean Monnet. The political goal of this strategy was quite clear: the integration of West Germany into a French dominated European Community. Interestingly this strategy also served the interests of the Adenauer government in West Germany, namely to reintegrate into the international community after the Nazi crimes. Adenauer’s first comment about the Schumann plan was: "That’s our breakthrough."7

France was at that time, however, not really interested in any other intensification of the European integration. France even blocked the Green Pool plan of the Dutch government, and the French National Assembly refused the plan to build a European Defense Community in 1954. The Europeanization of a common agricultural market, some years later, was the result of the shared interest of some member states. Particularly France benefited from the establishment of a huge subsidized agricultural complex, which protected French agricultural products and maintained the myth of the leading cultural role of the French farming. In short: the turgid political rhetoric for the European integration after World War II was one thing, the reality of the newly founded European institutions another.

Even in 1985, after passing the Single European Act, constant economic growth and the progressive realization of the economic and monetary union remained the key points of the European integration process. Strictly speaking, each step in the direction of the European Union — such as the Schuman plan, the establishment of a common market, the coordination of agricultural production — was no more than a technical solution for specific problems. What gave significance to them rhetorically was the "myth, that the European Community is the core of a far-reaching, pan-European perspective."8 Schuman himself, for example, argued in 1963:

> We must build a united Europe not only in the interest of the free nations, but also in order to be able to admit the people of Eastern Europe into this

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7Judt 31.
8Judt 57.
community if, freed from the constraints under which they live, they want to join and seek our moral support.9

In reality, however, the progress of Western European integration was based on the division of the European continent after the beginning of the cold war. This matter made the European Community much more political than the economic cooperation and the rhetoric about political integration. The politics of separation from the Eastern part of Europe, which was dominated by the Soviet Union, created a sense of community and common interests beyond the real existing differences between the West European nation states. Not surprisingly, the fall of the wall revealed the fragility and superficiality of this sense of community among the EU-member states, and contributed, in the first moment, to a politics of renationalization. The so-called German question was hardly on the agenda when France and Great-Britain revived their old anti-German reflex. French President François Mitterand even intended to foil the German unification. A few years later, the German politics of recognition on the Balkan and differing strategies in the Bosnian war indicated once again deep differences between the three most important EU member states.

3. Dilemmas of the Current State of European Integration

Turning to the institutional and political integration of the EU, we can state that the process of integration is now in a decisive but also a critical phase. In 2001 twelve EU member states introduced a common currency, indicating a new era of integration. This step was not just a matter of a perfect technical implementation, it was one of the most drastic changes in the history of Postwar Europe. Abandoning a country’s currency means to give up a central element of the sovereignty of the nation state and its capacity to structure social security and solidarity for its citizens. This process did not meet the approval of all peoples as the outcome of the Danish referendum in 2001 revealed.

9Citation taken from the English version of Joschka Fischer’s speech at the Humboldt-University in Berlin in May 2000 (homepage of the German Ministry for Foreign Affairs / http://www.auswaertiges- amt.de/www/de infoservice/presse/index).
Promising the people of the member states advantages, the European Monetary Union (EMU) is forced to be successful in order to avoid disappointment and discomfort.

A further critical point in this context is the gap between progress on economic integration, on the one hand, and problems brought about by the integration of political and democratic structures of the EU on the other, a tension "which might lead to crises within the EU," as Joschka Fischer predicted in his Berlin speech about the future of the EU in 2001.10

Finally, a pivotal challenge is the Eastern enlargement of the EU in May 2004. "Return to Europe" was one of the slogans of the dissidents who propelled the silent revolution in 1989. And in fact, Europe can no longer be reduced to Western Europe. Today the Central-East European countries ask for the solidarity that Schuman promised them in the sixties. The Eastern enlargement, however, does not only question the existing administrative structure of the EU but it also requires a reconfiguration of the relationship between the supranational institutions of the EU and the member states, not to speak of the problem of how to deal with the different historical experiences and mentalities in Eastern and Western Europe which can produce unforeseen confrontations and conflicts. Looking back a few years at another event, the war in Bosnia and in Kosovo demonstrated the difficulties of the European member states to overcome egoistic national interests and to develop a coherent common Foreign and Security and Defence policy. It became obvious that the EU was still dependent on the leadership of the US in order to overcome internal differences and to make the EU capable of acting, particularly in cases of military intervention.

Facing these challenges, the discourse about the future of the European Community has evolved over the last years. For decades the question of a successful economic cooperation dominated the agenda of integration, whereas questions of a common political identity were downplayed. The more European unity became a reality, the more the original political idea of Europe lost its visionary force, and the old founding myths vanished over the years. Many believed that the gradual progress in economic

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10Fischer, speech at the Humboldt-University in Berlin May 2000.
integration would accelerate political integration and create a common European identity. This kind of integration no longer works, however. Joschka Fischer emphasized in his speech at the Humboldt-University in Berlin:

The Monnet method . . . was conceived in the 1950s for the economic integration of a small group of countries. Successful as it was in that scenario, this approach has proved to be of only limited use for the political integration and democratization of Europe.11

Exactly in this situation the call for a new founding idea of Europe gained momentum. More and more politicians in Europe and advocates of the idea of the "United States of Europe” realized that the EU was still lacking a sufficient political basis or, to put it more clearly, a connecting and overarching political identity beyond the common market, the common currency, and the supranational institutions of the EU. Europe was, as the Italian philosopher and politician Massimo Cacciari put it, still an "unidentified political object.”12 Particularly the question of legitimacy is still one of the EU’s crucial problems. Legitimacy is, taking the structure of the EU, a very scarce resource. This is not only true because the authority of the European parliament is restricted in many ways and because there is no elected and democratically controlled European government, which in itself is already problematic. But even more decisive is the lack of a unifying narrative or of a founding act which — in the past — created a common political WE- identity and in which the consciousness of an all European people is expressed in a symbolic sense. The idea "people of Europe” is still a phantom, and the EU is not a collective political body rooted in a political revolution or in a founding act, set up by the people of Europe. The EU is not even a state. It is a useful, but artificial product of political elites who learned the lesson of the first half of the twentieth century in Europe and established an interest — and economic-guided Union. In spite of all efforts to create a European identity, we have to admit that Europe is still divided in different national political cultures, different democratic publics, different party systems, and different memories, separated further by linguistic boundaries. This fact

11Fischer, speech at the Humboldt-University in Berlin May 2000.
12Unpublished Paper of Massimo Cacciari ("How to think Europe?").
obliged Joschka Fischer to say that it will be an illusion to force political integration of the EU "against the will of the existing national institutions and traditions." 13

How can we overcome this dilemma? Being aware of the shortcomings of a European political identity, politicians and pro-European intellectuals started promoting the idea of a Constituent Treaty as a deliberate political act to reestablish Europe. 14 The Charter of Fundamental Rights, elaborated by a Convention under the leadership of the former German President Roman Herzog, which was adopted by the EU summit in Nizza in December 2000, is regarded as a cornerstone of a future constitution. In a very general way, the declaration of Human Rights and the imperatives of the French revolution are the heart of the Charter, as the following sentences from the Preamble of the Charter indicate:

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security, and justice. 15

The attempts to strengthen the democratic element in the structure of the EU is worth supporting, but the way in which the process of constitution building was executed raises some questions. Hannah Arendt, reflecting on constitution building, was very sceptical about constitution building from above, where a government gives a constitution to the people instead of the people creating a government in the process of constitution building. At the very least a question arises about the extent to which the people in Europe will identify themselves with this constitution.

4. The Holocaust — a Founding Act in European Constitution Building?

13 Fischer, speech at the Humboldt-University in Berlin May 2000.
14 See, among others, Jürgen Habermas, "Warum braucht Europa eine Verfassung?" Die Zeit (27 June 2001).
It would appear that the process of constitution building needs in any case a kind of underlying foundation in order to mobilize public support. Dan Diner has argued in this context that the commemoration of the Holocaust is increasingly becoming the core of a unifying European memory, thus giving constitution building in Europe the necessary symbolic foundation. The consequences of the Holocaust in the past and in the future, according to Diner, give this ”negative apotheosis of European history” the importance of a founding act.16 The emergence of the Holocaust as a central point of reference for a common European identity is, as Diner argues, not the product of any intention. Instead it evolved by ”invisible hands” because it refers in a universal sense to the uncertainty of civilization. And Dan Diner continues: ”The ethical imperatives of this founding act constitute a catalogue of values which are of normative importance for a political Europe.”17 In keeping with Diner’s argument the commemoration of the Holocaust — as an event which gives meaning — is not only a source of symbolic legitimacy but also of political action and values, such as the rejection of racism, anti-semitism, and xenophobia. Diner mentions in this context the sanctions of the EU member states against the Austrian coalition of the ÖVP and the FPÖ as one striking example.

Diner’s interpretation is in many respects reasonable and persuasive, particularly in highlighting that the Holocaust has become a matter of universal concern, and that more and more countries in Europe seek to come to terms with the heritage of the Holocaust and their own moral and historical guilt or even with their own involvement in the Shoah. Poland, for example, was shaken up by an intensive discussion about the murder of Jewish people by Poles in Jewabne. Another example of the growing preoccupation with the Holocaust was the Stockholm International Forum on the Holocaust three years ago. And in 2001 not only Germany but also Britain and France organized a Holocaust memorial day for the first time in their history. Without ignoring that in this respect the Holocaust is indeed a central point of remembrance all over Europe, it is necessary to

17Diner.
raise some critical questions and to formulate some objections with regard to Diner’s interpretation of the Holocaust as a "negative” founding act of the EU.

First: The interpretation of the Holocaust in the context of a political theory of founding acts is, of course, only plausible from an ex-post perspective. Originally, when the first steps of the EU were set up, the eradication of the European Jews was scarcely a point of reference at all. At that time the collective memory in Europe was, above all, determined by two concepts: Anti-nazism and Antifascism. In both concepts the Shoah was to a certain extent even excluded from commemoration for rather simple reasons: anti-nazism enabled many countries to project all responsibility for the war crimes on Nazi Germany and to suppress the fact that collaboration, anti-Semitism, and even support for the deportation of Jews to the concentration camps were part of Europe’s history during the Nazi dictatorship. Antifascism, on the other hand, particularly promoted by the Communists, served as a legitimizing ideology and founding myth for the seizure of power in Eastern Europe and in the GDR by communist movements and parties, highlighting the heroic power of communist resistance. Also in this concept, the destruction of European Jewry did not play a prominent role. And in the years between 1950 and 1989, when the ongoing process of West European integration was accompanied by many political and intellectual debates about the future of the European project, the Holocaust — as a central point of reference or even as a founding act — was hardly mentioned. This is also true for the different treaties in which the EU member-states defined the original values, the political goals and the progress of the European integration. This does not mean that discussions about the annihilation of European Jews didn’t play any role at all during this period. At different times, in different contexts, and at different occasions, the historical truth about the Holocaust became part of the public consciousness in various European countries. Particularly in the 1990s, after the fall of the wall and the opening of the iron curtain, the heritage of the Nazi past and the involvement of many European countries in the discrimination, exploitation and extermination of Jews regained relevance in public discourses. However, the Holocaust is necessarily differently embedded in the political culture of each country. In Germany as a perpetrator nation, the commemoration of the Holocaust is, of course, different from the way in which the people in the United Kingdom
commemorate the Holocaust. When Prince Charles and Tony Blair attended in 2001 the first National Holocaust Memorial Day in the United Kingdom, the commemoration ceremony, broadcast on television, started with a girl from Kosovo who lit a torch of memory. After that, two survivors of the Holocaust described the hell of the concentration camps, followed by reports of a teacher who escaped Pol Pot’s massacre of intellectuals. The ceremony continued with a contribution of an actor who reminded the audience of "the forgotten Holocaust," namely the persecution of homosexuals. Documentary films about the liberation of Bergen-Belsen and extracts from the film "Killing fields" as well as pictures from the war terror in Rwanda and Bosnia rounded off the ceremony. It is hard to believe that Germans will ever conduct the Holocaust memorial day this way.

Second: Also in Poland and in other East-European countries people cope in different ways with their antisemitic heritage than the French do with the heritage of the Vichy regime. It is still the case that substantial political experiences in Europe are interpreted in the terms of national history or in the context of local and regional identities. Even intellectual debates, usually capable of forming collective identities, are still structured along national borders in Europe. Anyhow, a European public, comparable to the political public in the different nation-states of the EU, does still not exist. Against this background one might call into question the notion that the remembrance of the Shoah is really the core of a unifying European memory. Or, to take the argument one step further, the attempt to interpret the commemoration of the Holocaust this way is part of the increasing efforts to create a new overarching and significant founding myth, which can fill the gap of political identity in the process of European integration and constitution building. In this respect we can also question Dan Diner’s assumption that the role of the Holocaust as a new founding act evolved by "invisible hands.” Michael Jeismann put it the other way round when he argues:

Currently there are global forms of collective memories being shaped, and this process is accompanied by the rise of political lobbies which fight for more influence. For the last few years particularly the humanities and social sciences in

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18All information about the Holocaust Memorial Day 2001 in the United Kingdom are taken from an article in the Frankfurter Allgemeine Zeitung (31 Jan. 2001).
EU countries have been encouraged to propel Europeanization through the creation of a positive identity. . . . This concerns the ideological founding of supranational political entities and political interventions, the creation of universal moral key words and charging them with historical significance. The way in which this founding is connected with pedagogy and political functionalization makes the whole venture problematic.19

Taking up Jeismann’s point, the question emerges whether or not a moral- and interest-guided discourse about the commemoration of the Holocaust could and should shape political action in Europe’s future. To enforce and to legitimize political action with reference to a historical event that for political reasons has been given surprahistorical meaning, seems to be problematic because it heavily burdens the political space in moral terms. The subordination of politics to such a moral judgement could, at very least, give rise to a questionable political instrumentalization.

Some examples of the past ten years reveal how politicians and intellectuals tend to use the claim "Auschwitz never again" in order to legitimate or even to prevent political action. When Günther Grass and other intellectuals from the left, for instance, fought against and condemned the German Unification process in 1989/1990, they referred emphatically to the past, and particularly to Auschwitz. Other examples are provided by the military interventions in the Balkans. After the massacre of Srebenica in Bosnia and before the NATO-involvement in Kosovo, one faction of intellectuals and politicians employed the dictum "Auschwitz never again" in order to legitimate military intervention whereas the other faction used the dictum in order to argue against military intervention. Comparing the massacres of the Serbs and the existence of concentration camps in Kosovo with the systematic extermination of the Jews, Joschka Fischer and Rudolf Scharping, on the other hand, used the reference to German historical responsibility for Auschwitz in rather problematically moral terms in order to justify the German involvement in the Kosovo war. Finally, there was the initiative to institute sanctions against Austria after the coalition building of the ÖVP and FPÖ, started after the Holocaust Forum in Stockholm. The political discrimination against a democratically elected government on behalf of superior values was, however, in many ways

problematic. The sanctions didn’t refer to concrete racist or xenophobic policies of the newly established government, but the establishment as such — including the right populist FPÖ — was discriminated against on behalf of moral imperatives derived from the commemoration of the Holocaust in Europe. In many smaller European countries and particularly in some East-Central European countries the sanctions were hotly debated and rejected because of their autocratic and arbitrary character. Critically evaluating these examples we should resist the temptation to found Europe’s political identity on an event which is more and more given a quasi-religious dimension in commemoration discourses. Gabriel Schoenfeldt pointed out that there is, particularly in the US, a certain tendency to “naturalize” the Holocaust and to make a kind of civil religion out of it.20 The question is whether or not Europe will follow this path. European politicians and intellectuals, we suggest, can contribute to a more thoughtful way in which the remembrance of the Holocaust can become part of the collective memory in Europe without determining political action. The fact that the Holocaust happened gives evidence to the fact that in politics we are never acting on stable grounds and that democracy and the values of human civilization are always threatened by unforeseeable historical developments. To the contrary, totalitarianism is to a certain extent inherent in the structures of modernity, and each attempt to ban the totalitarian temptation by moral imperatives or verdicts will probably fail. The French political thinker, Claude Lefort, has pointed this out:

For the last few years, we have been taught that it is our duty to remember. That is certainly a positive development. Yet the doctrine that urges us not to forget the crimes against mankind is accompanied by the hope that this memory will prevent us from repeating the atrocities of the past. But without the duty to think, the duty to remember will be meaningless.21

The refusal to think of the totalitarian temptation as something which is emerging from inside of democratic societies and not from the outside might be more dangerous.

20Gabriel Schoenfeld, ”Auschwitz and the Professors,” Commentary 105.6 (June 1998): 42-46.
21Unpublished paper of Claude Lefort, ”The Refusal to Think Totalitarianism.”
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