

The European Constitutional Treaty: its past, present and future

It seems extremely unlikely that the European Constitutional Treaty will ever be ratified in anything like the form adopted by the Union's heads of state and government in 2004. No plausible strategy has yet been put forward whereby the voters of France and the Netherlands can be persuaded to reverse their rejection of the text last year. Even if such a surprising change of heart could be secured, a number of other countries would still need to hold further referendums on the Treaty. It would be little short of a miracle if such countries as Poland, Denmark, the United Kingdom and the Czech Republic all decided to ratify the Treaty in a popular vote. The elaborate and carefully-crafted compromise which was the European Constitutional Treaty seems dead beyond resuscitation.

It may well be that the artfulness and sophistication of the Treaty's text was a decisive factor in its rejection by the French and Dutch electorates. On a range of issues, the Treaty was capable of radically different interpretations, acceptable to representatives from all points on a number of political and economic spectra. Ministers, officials and national politicians are accustomed to live with and rejoice in such ambiguity. Ordinary voters expect something more clear-cut, particularly from a document which proclaims itself a constitutional text. Advocates of the Constitutional Treaty in France and the Netherlands were often outraged to discover that the Treaty was being attacked by its opponents from a range of contradictory points of view. As Janus-like a document as the Treaty was always likely to meet this fate in a popular debate where clarity was the precondition of comprehensibility.

It is certainly true that a powerful case can be made for the argument that the Constitutional Treaty, if adopted, would make the European Union more efficient, more democratic and (somewhat) more transparent. These merits were naturally easier to demonstrate to listeners already well informed about the present workings of the European Union and therefore more apt to accept that, for instance, a system of modified double majority voting in the Council is clearly preferable to the iniquitous system of triple majorities now obtaining under the Nice Treaty. But those elements of the Treaty which bore directly

upon efficiency, democracy and transparency in the European Union were never at the heart of the debate in France and the Netherlands. Very few of those who voted against the Constitutional Treaty in either country did so because they had read the Treaty and rejected its detailed provisions. In so far as specifically European issues weighed with them, their concern was much more to voice their disquiet about the current state of the European Union and to articulate their profound doubts about the capacity of the Constitutional Treaty to remedy the Union's perceived deficiencies. For the Treaty's drafters and signatories, the document was an at least a partial solution to the Union's ills. For many French and Dutch electors, it was either tangential to those ills, or even an unattractive symptom of them.

This incongruity between the perspective of the Constitutional Treaty's advocates and that of the electors asked to opine on it was well illustrated by the almost total absence of debate in either France or the Netherlands during the national referendums on the supposed contribution of the Treaty to "making the European Union more democratic." The democratic credentials of the European Union are a favoured topic of discussion among political theorists. For some, these credentials are robust, derived from the national elections which generate the Council of Ministers and the European Elections which generate the European Parliament. For others, these credentials need reinforcement, perhaps by greater legislative powers for the European Parliament, perhaps by greater involvement of national parliaments in the Union's legislative procedures, perhaps by greater recourse to the direct democracy of petitions and plebiscites. The European Constitutional Treaty had much of interest to say on this subject, unsurprisingly given that the Constitutional Convention which produced the first draft of the Treaty was a largely Parliamentary body. But these provisions, designed to confront the supposedly existential question of the Union's democratic quiddity, found strikingly little resonance with either the Dutch or French electorates, who seemed largely indifferent to the new powers (real powers in the case of the European Parliament, hollow powers in the case of national parliaments) which the Constitutional Treaty gave to MEPs and MPs. It was certainly not the case that many French and Dutch voters looked at these provisions and found them either insufficient or excessive.

A certain kind of Eurosceptic analysis claims to have an explanation for the unwillingness of European voters take seriously the “democratising” reforms of the European Constitutional Treaty, reforms which for its most enthusiastic advocates were at the heart of the Treaty’s attractions. This analysis suggests that that a European “democracy” is not merely materially difficult to achieve, but a fundamentally and conceptually unattainable goal. Since, their arguments runs, there is no European “demos,” any attempt to construct a European “democracy” is doomed to failure from the beginning. “Democracy” is on this analysis exclusively an outgrowth of nation states, with their established and recognisable “demoi.” It is not necessary wholly to accept this analysis to acknowledge its potential explanatory power. It needs more explanation than some theorists of the European Union allow that the apparently formidable democratic structure of the European Union, with its elected Council of Ministers and directly-elected European Parliament, seems in the perception of many European voters to exist in an altogether different realm of political discourse from that which they standardly apply to their own familiar domestic and national systems. The prospective enhancement or feared reduction of their democratic rights are topics entirely capable at the national level of sparking for the great mass of European voters violent political controversy in the national political arena. At the European level, such questions of democratic governance are very much the preserve of the experts, the theorists and the professional politicians. The point has already been made in this article that in its inaccessible vocabulary and carefully-weighted formulations the Constitutional Treaty was not a document particularly likely to command popular endorsement. Perhaps this was not merely a tactical failure of the Treaty’s drafters. Perhaps the overall aspiration to democratise the Union through the Constitutional Treaty was misconceived. The radical Eurosceptic analysis would certainly point towards this conclusion.

There is, however, another view that can be taken of the real problem to which many Eurosceptics point, namely the absence of anything until now that could rationally be described as a European “demos.” It is to ask whether it may not be possible to encourage and facilitate the emergence of a European “demos” by political practices and structures, thus inverting the logical flow of the Eurosceptic argument. The Eurosceptic argument rightly observes that there is as yet no European “demos” and concludes from this accurate observation that there can be no genuine European democracy. An alternative approach is to

wonder why there is no European “demos,” to ask whether that absence is an unchangeable one, and finally to speculate what structures or circumstances might be favourable to the emergence, consolidation and self-realisation of such a demos. Historically, the “demos” of the nation-state was normally a consequence of political structures which led individual citizens living within those political structures to think of themselves as comprising a polity. For good and understandable reasons, the European Union has remained until now strikingly short of political structures and practices which make it easy for the Union’s citizens to think of themselves as a “demos.” The member states of the Union have found it much easier to talk about strong and autonomous European structures than to support resolutely these structures where they exist and to work cohesively towards extending their capacity and legitimacy where these elements are lacking. Viewed as a demos-building construct, the Constitutional Treaty contained a limited number of worthwhile innovations (for instance the election of the Commission President in the light of the European Elections, greater transparency in the Council of Ministers, the European Foreign Minister and the Charter of Fundamental Rights.) Even these innovations, however, were hedged around by the European Council with limitations, restrictions and ambiguities which inevitably lessened their potential public impact. The members of the European Council would rightly observe in their defence that any consensus among the twenty-five (soon to be twenty-seven) of them inevitably presupposes an extensive process of diplomatic negotiation, in which fundamentally different starting-points need to be reconciled. Those who believe that the Constitutional Treaty, or something very like it, was the only text upon which it would have been possible to achieve consensus in 2004 are implicitly drawing attention to the vast task facing those member states of the European Union who genuinely (and not merely rhetorically) wish to endow the Union with political structures that will facilitate the emergence of a European demos. There are some member states in the Union (of which the United Kingdom has been until recently the most articulate example) that do not wish the Union to assume any more of the aspects of a polity than it possesses already, and for which sophisticated inter-governmental co-operation is the preferred future road for European development. It may be that such states are sufficiently numerous and sufficiently determined to prevent the particular institutional evolution of the European Union which would make possible a genuinely democratic future for the Union by easing the birth pangs of a European demos. Discussion of the appropriate European institutional structures and practices to ease this birth runs the risk of limiting itself to the

realm of pure theory, foundering on uncongenial political reality when it seeks to enter the domain of the diplomatically achievable. Even so, the discussion is an absorbing one, and the remainder of this article will be devoted to pursuing it. The main components of the discussion will be the European political space, the European single currency, the Union's role in the world and enlargement.

### The European Political Space

Reference has already been made to the hitherto purely national configuration of debate on European topics. There are vigorous and well-informed debates, particularly among elites, on the future of the European Union in France, Germany, the United Kingdom and most of the Union's other member states. But these debates are striking by their predominantly national coloration. It is of course true that national governments sometimes collaborate on common European initiatives, but in doing so they are rarely responding to domestic political pressure. They are pursuing a rationally intergovernmental diplomatic strategy, deriving from the traditional concept of European policy as foreign policy, not internal policy.

Two particular innovations seem crucial for the creation of a specifically European political space, in which a common political debate and common political preoccupations can be fostered. The first is the reinforcement of the existing embryonic European political parties, the second the restructuring of the European Parliamentary Elections in such a way that they demonstrably correspond to political choices by the electorate of personnel and policies. The two innovations are linked, in that European political parties and their common platforms are a precondition for the exercise of meaningful choices by the European voters in the European Elections. Moreover, European Elections provide for European political parties a uniquely favourable opportunity to make their policies and personalities known to the European electorate.

On the formal level, a number of trans-European political groupings already exist, but their institutional potency and political cohesion are limited. They are loose associations of national parties, with limited resources and little outreach into the national populations. Even those European politicians and governments

who have proclaimed themselves enthusiastic advocates of rapid European integration have failed to see the vital role for the Union's democratic future which accrues to trans-national European political parties. It has sometimes seemed easier for national governments to pool their sovereignty than for national political parties to do so. When in opposition, national political leaders sometimes like to use the rudimentary structures of the European political party to which they are affiliated as a lever to increase their international profile and influence. When elected to national office, this enthusiasm for trans-national politics is often, if understandably, supplanted by the preoccupations and opportunities of national office.

It is unsurprising that those countries of the Union unenthusiastic about deeper European integration, such as the United Kingdom, should always have regarded with suspicion the prospect of genuinely trans-European political parties. More surprising is the equal tepidity with which such integration-minded countries as Germany and Italy have approached this question. It would be difficult to name a single government of the European Union that has distinguished itself by its effective lobbying for a structure of genuinely competing political parties at the European level. National and European funds for the vestigial parties that exist are extremely limited, in flagrant contrast to the substantial public and private funding assigned to national political formations, the role of which in sustaining national political life is universally recognised.

Every five years, at the time of the European Elections, the trans-European political parties show some signs of life, usually adopting a manifesto for the elections and sometimes expressing vague aspirations about their preferred (or unacceptable) candidates for the next President of the European Commission. Standardly, these manifestoes are couched in vague and aspirational terms, playing little or no part in the national debates preceding the European Elections. The commitment of the trans-national political parties to their candidates for Presidency of the Commission has been equally half-hearted. The political affiliation of the Commission President has always reflected the balance of political forces in the European Council more than in the European Parliament. The European Council has its own high democratic legitimacy, but

it is a legitimacy derived from purely national elections. Its operations at best indirectly express the views of an emerging European demos.

It can legitimately be argued that the present state of the European Union's legislative structures makes it very difficult for a clear connection to be established between the votes cast in the European Elections for individual candidates or parties and the legislation adopted by the European Union over the following five years. The European Parliament has increasing influence over the legislative texts adopted by the Union, but it is only one partner in the legislative triangle of Commission, Council and Parliament. The European Parliament is thereby compelled to a continuing process of negotiation and compromise, an unending "Grand Coalition" which precludes before the European Elections the sharply-drawn legislative promises offered by competing political parties in national elections. The general and unconstraining nature of manifestoes before the European Elections is arguably a reflection of this complicated institutional reality.

But if the European Parliament has to tread carefully on legislative matters, it is far from similarly clear that it needs to avoid clear choices in the matter of the Commission Presidency. The national "demos" chooses political personalities for office as well as political programmes. The European Constitutional Treaty attempted to enhance the role of the European Parliament in the choice of President of the European Commission, enjoining the European Council to "take account" of the results of the most recent European Elections in their choice of next President. This was an unsatisfactory and ambiguous formula, which might have obscured the desired direct link between votes cast in the European Elections and success or failure for identifiable candidates who wished to be President of the European Commission. But the motivation behind the Treaty's proposal was an entirely comprehensible one. It is currently difficult to explain to Europe's voters just what is at stake in the European Elections, since the causal link between the votes they cast and changes in policies or office-holders is at best an indirect one. A direct causal link between votes cast and the identity of the Commission President would add a new "demos-enhancing" dimension to the European Elections. The sense that the electors of the European Union voted corporately and directly for a central element of the European Union's governing structure would not merely conduce

to the transparency and legitimacy of the Union, it would also represent a significant building-block for the creation of the European demos.

### The Single European Currency

Since its inception, the euro has generated unending debate about the extent to which it needs to be accompanied by a “political union.” As always in such debates, a wide spectrum of positions can be observed. There are those who argue that the European currency should have been preceded by a “political union.” Others hope (or fear) that it will now lead inevitably to a “political union.” Yet others believe that monetary and “political” union are two quite separate and unrelated questions. The discussion is rendered yet more impenetrable by the lack of any common understanding of precisely what this “political” union might look like.

It is not necessary to resolve in all its detail this fundamental argument to highlight the aspect of the single European currency most relevant to our present discussion. It is that the present governance structure of the single European currency is one which does not favour the emergence of a European “demos,” since its supranational aspects are purely technocratic and its political aspects are largely national in character. Changes to the single currency’s structure of governance have been proposed, sometimes based on economic considerations, sometimes on political considerations, sometimes on both. Many of these changes would have the effect of increasing the single currency’s ability to act as a “midwife” for the European demos. Radical or even marginal changes in the structure of the single European currency are politically difficult to agree among the heterogeneous participants. But a review of the euro’s present structure of governance is illuminating of the possible future role which the single currency might play in the consciousness of the European demos.

For a mixture of political and economic reasons, the single European currency was set up with an idiosyncratic structure, with its essential elements of governance a powerful, independent European Central Bank and an agreement between the member states to restrict their public deficits to 3% of GDP. This structure was chosen partly in order to reassure the German and government and



electorate, by reproducing at the European level the perceived central role of the Bundesbank in German economic success. It also reflected the majoritarian view current among European governments in the late 1980s and 1990s that the most important components of successful economic policy were the repression of inflation and budgetary discipline by national governments. Even at the time when the European single currency was launched, this analysis was not universally shared by the Union's governments and citizens. It is, however, an analysis deeply embedded in the current governance structures of the euro.

There were many observers who believed in the early 1990s that the single European currency would inevitably act as an accelerator of the general process of European political and economic integration. The absence of anything that could seriously be designated as an "economic government" for the Eurozone would over time give way to at least primitive structures of economic co-ordination within the single currency area, leading in time to a greater sharing of economic sovereignty between the Eurozone's governments. This has not happened and seems unlikely to happen in the near future. As a result, the single European currency has not been the vehicle for an enhanced European political identity based on greater sovereignty-sharing which some predicted. Indeed, it can be argued that in some countries of the Union (notably France) the particular structure of the single European currency has attenuated rather than reinforced the sense of an increasingly shared European political identity. The technocratic nature of the European Central Bank and the sometimes unwelcome restrictions imposed by the Stability and Growth Pact governing the 3% limit on public deficits created an image in the mind of some of a single European currency which confined rather than broadened the ways in which the European Union could express its shared aspirations.

Difficult although it may be now to predict the exact final form which the single currency's governance structure may take, it would be surprising if it retained indefinitely the structure given to it by the Treaty of Maastricht and the Stability and Growth Pact. These documents were very much a product of the intellectual and political milieu from which they were born. Almost any foreseeable change in the workings of the single European currency would be likely to augment its capacity to foster a European political identity and the demos which is the natural concomitant of this identity. At the moment, the contribution of the

single European currency to demos-building is extremely limited. It should not be assumed that such will always be the case.

### European foreign policy

Of all the proposals contained in the European Constitutional Treaty, those concerning the European Union's role in the wider world were the most promising in regard to the establishment of a European political identity. The symbolic importance of the creation of a European Minister for Foreign Affairs can hardly be overstated. It may seem paradoxical that a political community such as the European Union should significantly define and recognise itself in its external relations, but few would deny that the other great powers of the world follow a similar path. The authority and cohesion of the American, Chinese, Russian and even Indian polities are powerfully reinforced by the external policies of those countries, not merely in so far as they promote national interests abroad, but also as political and philosophical expressions of national cultures and civilisations.

In this context, the European Union currently finds itself in the happy position of being able to represent on the world stage a set of values which is widely shared among the governments of the Union and the Union's citizens; which is specific to the European Union; and which is capable of attracting a considerable degree of sympathy from a range of other countries in the world. Briefly, these values are those of a multilateral legal order, of peaceful resolution of disputes, of human rights and of social solidarity. They arise from the recent historical experiences of the Union's member states and find their institutional expression in the European Union. There is good reason to hope that if anything can be saved from the European Constitutional Treaty, it will be those provisions relating to external affairs, which were largely consensual among member state governments and certainly played no significant role in opposition to the Treaty in France or the Netherlands.

If an increasingly influential European external policy is to provide some of the cement necessary for building the European Union's demos, it is vital that the

citizens of the European Union should be able to recognise in that policy the pursuit of those specifically European values identified above. A warning note is provided by the Union's stance within the negotiations relating to the World Trade Organisation. Although Europe is widely recognised as a trading "superpower," with prestige and influence in trading fora comparable to that of the United States, it can hardly be claimed that M. Lamy and Mr. Mandelson have over the past five years carried with them the sympathetic goodwill of the majority of the Union's citizens with them as they sought to conclude the Doha Development Round. This is partly because there are genuine differences of economic analysis within the Union's member states on questions of trade liberalisation, and partly because these questions are highly technical, impenetrable to a wider audience. But there is also in a wide section of the Union's interested public that in the WTO negotiations a perception that the Union has simply imitated the self-interested tactics of other regional power-blocks, exchanging reciprocal concessions with the United States or other partners on an ad hoc basis rather than in pursuit of any more enlightened vision of a benevolent global economic order. This perception may well be unfair, even a caricature. But it is a reminder that if the external policies of the European Union are to help rather than hinder the process of demos-formation, these policies must commend themselves on their merits to Europe's citizens, as the manifestation not merely of European interests, but of European values as well.

### Enlargement

From the preceding discussion, it has become clear how closely related are two concepts, that of "demos" and that of "political identity." The European Constitutional Treaty failed, for a number of understandable reasons, to sketch out a clearer political identity for the European Union than it currently enjoys. This was one reason why in the minds of many voters it failed to present itself as a plausible "constitutional" document. By its failure to sharpen the contours of the European Union's political identity, the Treaty was condemned also to fail in any aspirations its drafters may have had to heighten the self-consciousness of the Union's citizens as being members of the same "demos." But at least for some voters in the Netherlands and France, the failure of the European Constitutional Treaty to consolidate the Union's political identity was not merely a contingent one. It derived rather from the continuing geographic

enlargement of the Union and the consequent “dilution” of its potential political cohesion. On such an analysis, it must be gravely doubtful whether the existing European Union of twenty five member states can ever form a “demos” and almost inconceivable that a yet larger Union, perhaps including Turkey, could rationally even aspire to do so.

Opinion polls suggest that in France and the Netherlands those voters whose rejection of the Constitutional Treaty was linked to what they saw as the uncontrolled enlargement of the European Union were a minority. It can only as yet be a matter of speculation whether the recent and likely future enlargements of the Union will render more difficult or even impossible the formation of a “demos” for the European Union. But the question is a central one for the future evolution of the Union. European institutions and the way in which they function can provide the context for but cannot guarantee the emergence of this “demos.” There are at least preliminary indications that increasing geographic, economic and cultural heterogeneity within an enlarged European Union may act as a barrier to the formation of an EU “demos.” The greater this objective heterogeneity, the greater the barrier is likely to prove. There is in any polity, existing or emerging, an interplay between institutional structures and public opinion. Many analysts have hoped or feared over the past twenty years that the enlargement of the European Union would serve to retard the political integration of the Union by making more difficult the day-to-day operation of its institutions. There is little sign so far of that happening in the most recent round of enlargement, that which occurred in May, 2004. It would be an irony indeed if the institutions of the Union emerged relatively unaffected by the Union’s enlargement, but at the cost of a substantial reduction in the willingness and capacity of the Union’s citizens to see their political future as represented in those institutions. Those of Europe’s politicians still committed to deepening the process of European integration need urgently to reflect upon how to evolve an account of the reasons for the Union’s enlargement which will avert the potentially fissiparous psychological effects of an apparently ever-expanding Union. It may well be that such an account can be constructed. At present, a number of conflicting and contradictory accounts for the Union’s enlargement are in circulation, with predictably disorienting and divisive effects on European public opinion.

## Concluding reflections

The European Constitutional Treaty was rejected by the French and Dutch voters, and would probably have been rejected by other voters as well, for a range of sometimes contradictory reasons. The very contradictory nature of those reasons suggests that no simple solution is to hand for the political impasse created by the Treaty's rejection. But nor is it clear that the Treaty's ratification would have marked of itself as significant a step in the Union's evolution as some of its advocates (and critics) contended. The Treaty, appropriately for a Treaty, reflected quite different views of what the future direction of the European Union should be. A genuine Constitution would have demanded a much clearer set of goals and aspirations for the Union. It is not at all clear that the Union currently possesses a viable mechanism for discussing what those goals might be and how the choice is to be made legitimately between conflicting goals. A European Constitution is for this reason probably for a number of years to come an unrealisable objective. The Union will have had to make much more progress than it yet has towards an EU demos before it can reach a genuine constitutional settlement. Progress in this direction is certainly attainable, but is likely to be difficult and irregular, both geographically and temporally. It would be a brave prophet who would claim to predict the resolution of all the problems and uncertainties which the Constitutional Treaty reflected and in some cases exacerbated.