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What do French voters want from the European Constitution?

Introduction

In his televised debate with young French voters on 14 April, French President Jacques Chirac said that one of his main arguments for ratifying the European Constitution was that it took Europe in a 'non-liberal' direction by adding a 'political Europe' to the 'economic Europe' of earlier Treaties. In the United Kingdom, such an argument, whether factually correct or not, would be found only in the mouth of a politician from the left of the British political spectrum. This is not so in France, where wide swathes of elite and public opinion judge the benefits or otherwise of the European Constitution by the extent to which they see it as creating a 'social' or 'political' Europe' which will combat the perceived negative effects of neo-liberalism, globalisation and American political hegemony. Mr Chirac clearly hopes to persuade the French electorate that the European Constitution goes some way at least to meet these concerns.

There is a powerful current of opinion in France which opposes the European Constitution on the ground that it enshrines a neo-liberal, 'Anglo-Saxon' socio-economic model for the European Union. This Policy Brief will argue that there are some innovations in the European Constitution which take account of current French concerns about the future direction of the European Union. Nevertheless, it is clear that that the Constitution does not meet French expectations – and those of the European Left more generally – in areas such as economic governance and fiscal and social harmonisation. Inevitably, the Constitution is a compromise which largely reflects the status quo. Those who seek in it either a radically more or less economically liberal European Union than is currently the case will certainly be disappointed. French criticism of the Constitution

CONTINUED OVERLEAF

EDITOR'S NOTE

This is the eleventh in a series of regular *European Policy Briefs* produced by the Federal Trust. The aim of the series is to describe and analyse major controversies in the current British debate about the European Union.

We would welcome comments on and reactions to this policy brief. Other Policy Briefs are available on the Federal Trust's website www.fedtrust.co.uk/policybriefs

tends to focus on its supposed excessive 'economic liberalism'. Much current British criticism attacks the Constitution from precisely the opposite viewpoint.

What is 'Social Europe'?

Particularly in France, but also more generally among left wing and centrist parties throughout Europe, the phrase 'Social Europe' has over recent years gained considerable currency. It has overwhelmingly positive connotations as well as little clearly-defined content. Two related, but separate developments have favoured the development of rhetoric centred on 'Social Europe': the advent of the European single currency and the strain to which established national models of social welfare provision have been exposed by German reunification, globalisation and the entry into the general European labour market of relatively cheap, relatively well-qualified workers from Central and Eastern Europe.

For countries of the Eurozone, membership of the Euro has brought the European Union much nearer to the central questions of national economic policy-making. In the years which preceded the launch of the single European currency, many governments were forced to make painful budgetary adjustments to comply with the Maastricht criteria for joining the Euro. The Stability and Growth Pact is designed to reinforce and consolidate this process now the Euro is in place. Even the erratic application of the Pact has not been able to dispel for many European citizens an image of the European Union and its single currency as a source of economic austerity and budgetary restraint. For many European politicians, the goal of a 'social' Europe is seen as a

politically attractive pendant to the 'financial' Europe of the bankers supposedly symbolised by the single European currency.

But even if the Euro had never been invented, German reunification, the end of the Cold War and the wider process of globalisation would have created, particularly in the longer-established member states of the European Union, fertile ground for the political rhetoric of 'social' Europe. Traditional European models of generous welfare provision by the state are under threat, as is shown by the wide range of reforms on pensions, health care and unemployment benefits today being undertaken by European governments. Part at least of this threat derives from the often painful competition which an increasingly integrated world-wide economy brings. Economic liberals tend to see such global competition in almost exclusively positive terms. But there is a substantial constituency in continental Europe, particularly in France, which looks to the European Union as a bulwark against the social disruption which they fear as the consequence of 'unbridled' competitive capitalism. The primary task of 'social' Europe is for these electors to protect the achievements of traditional European social models, by ensuring that European social and regulatory standards are not sacrificed to the arbitrary demands of the global free market.

In more specific terms, a number of policy prescriptions tend to be associated with calls for a 'social' Europe. Prominent among them is a demand for the establishment of high minimum standards for social and economic rights throughout the European Union. These standards are seen as 'European' achievements, which should not be

compromised by the temptation to seek a competitive advantage within the internal market of the EU. A 'social' Europe would also more consciously and deliberately seek by its policies socially desirable goals such as full employment, healthy economic growth and good public services. It should not be content to allow these goals simply to emerge, if at all, as beneficial consequences of the free market's operations. This might well involve a larger European budget to carry out these policies and greater sovereignty-sharing over the whole range of economic and social policy-making. This sovereignty-sharing in its turn would form an important underpinning for the 'economic governance' of the European single currency, which many of those who favour a 'social' Europe, particularly in France, see as the next and logical development of the Eurozone system.

Most controversially for the advocates of liberal economics, some at least of those who seek a 'social' Europe believe that it needs to include European-wide arrangements to inhibit social and fiscal 'dumping'. On their analysis, such 'dumping' occurs when one country, especially another European country, gains an unwarranted advantage over its competitors by systematically depressing the cost of labour as a result of a national system of low taxes, low public services and low welfare provision. An important debate during the negotiations leading up to the signing of the Treaty establishing the European Constitution revolved around whether it should in future be easier for the European Union to pass laws against fiscal and social 'dumping'.

A Small Step towards a 'Social Europe'?

Analysis of the European Constitution suggests that it goes somewhat further than previous Treaties in mentioning concerns linked to social and broad economic policy. There are six specific areas where the Constitution moves further in the direction of responding to such concerns: economic and social rights, public services, trade union involvement, economic governance, the Union's objectives and enhanced co-operation.

Economic and Social Rights

If the Constitution is ratified, the Charter of Fundamental Rights will become legally binding on EU member states, although its applications will be limited to European Union law and the national acts that flow from European Union law. Originally proclaimed on 7 December 2000 at the European Council in Nice, the Charter does not figure in the existing Treaties. Its incorporation into the Constitution as its Part II undoubtedly marks a step forward for the potential legal import of the Charter. The economic and social rights included in the Charter's Title IV under the heading 'Solidarity' will form an enhanced part of the political and legal background against which the European Union in general and the European Court of Justice in particular take their decisions.

Thus, workers will have under the Charter a right to information and consultation in the workplace (Art. II-87), a right of collective bargaining and action (Art. II-88), protection from unjustified dismissal (Art. II-90) and a right to fair and just working conditions (Art II-91). Also included are rights concerned

with the reconciliation of work and family, such as parental leave (Art. II-93), and a recognition of the entitlement to social security and social benefits (Art II-94). Outside Title IV, there is very broad protection against discrimination (Art. II-81) as well as a 'right to engage in work' (Art II-75).

This will be the first time that economic and social rights for European citizens will be included in the main body of a European Treaty. Some European governments would have wished that the Charter should be applied directly to national law, and not confined to European law or its national implementation. It is also true that, even before it was incorporated in the Treaties, the Charter was taken into consideration by the European Court of Justice in its deliberations. Its formal incorporation into the Constitution will consolidate rather than radically transform that position. Nevertheless, as a result of the Charter's new Constitutional status, the European Union will be endowed with a system of limited rights-based social guarantees. This can only be regarded as progress, albeit of a limited kind, for the advocates of a 'social' Europe.

Public Services

The protection of public services is an issue of particular importance to French voters, who are rightly proud of the high level of public services which they enjoy. Ironically, a number of French enterprises active in the provision of traditional public utilities have benefited from the liberalising effects of the European single market to expand their activities beyond the frontiers of France. But privatisation and increased competition in the sphere of traditionally public services are

not generally popular with French voters. One out of six voters in France is employed by the state. An accusation that the Constitution will further undermine public services is thus likely to resonate powerfully with the French public.

It cannot be said, however, that the European Constitution increases the extent to which the EU's internal market already impacts upon public service provision in France or elsewhere. Like the Treaty of Amsterdam, the Constitution explicitly refers to the importance of public services, albeit under the obscure name of 'services of general economic interest'. Art. III-122 states that 'the Union and the Member States, each within their respective competences and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions, in particular economic and financial conditions, which enable them to fulfil their missions'. What is new in the Constitution is that it envisages the future establishment of European laws that will set out these principles and conditions without affecting the competence of member states 'to provide, to commission and to fund such services'. These laws will be established by qualified majority voting and co-decision. This should reinforce rather than weaken the French conception of public service provision. Furthermore, the Charter 'recognises and respects' access to public services (Art.II-96). On the face of it, the position of French public services is at least marginally reinforced by the Constitution.

Trade Union involvement

Unusually for such a document, the Constitution recognises the role of trade unions within the EU. In this, it goes further than previous Treaties. Indeed, in the Constitution trade unions are presented as integral parts of the democratic life of the EU. At the Union level, the Constitution includes promises to promote the involvement of 'social partners' by frequent dialogue, including the Tripartite Social Summit for Growth and Employment (Art. I-48). In the field of social policy, any EU action will be subject to consultation with management and labour as part of a broader dialogue between these groups (Art. II-211). This inclusion within the Constitution of trade unions and labour movements as privileged partners undoubtedly reflects recurrent concerns in France and elsewhere that the organised interests of employees are underrepresented in the EU. Trade unions often express the fear that continuing European economic integration could weaken their traditional influence as labour representatives. The European Constitution clearly attempts to mitigate these fears.

Economic governance

In establishing European Monetary Union, there was a clear initial divergence of analysis between France and Germany. Germany was reluctant to envisage any highly developed mechanisms of 'economic governance'. It insisted rather upon the independence of the ECB and strict oversight of government deficits through the Stability and Growth Pact, France was always more willing to envisage an arrangement whereby coherent political direction was given to the

financial and economic administrators of the single European currency. It is still debated in France today whether the European Central Bank should retain that high level of political independence which it now enjoys. In particular, the view is expressed that the Bank's statutory focus on price stability should be supplemented by broader economic goals such as economic growth and the promotion of employment.

It is clear that the European Constitution establishes nothing which could be regarded as an economic government for the European Union. Nevertheless, it provides the Union with a clearer voice on economic issues, especially within the Euro Group. The Constitution mentions the possibility of the unified representation of Euro member states within international financial institutions and conferences (Art. III-196). The Protocol on the Euro Group, annexed to the Constitution, sets out an organisational framework for the informal meetings of the Eurozone member states and provides for the creation of a president of the Euro Group, elected for two and a half years. This latter provision has already been put into effect, with Luxembourg's prime minister Jean-Claude Juncker taking the helm of the Euro Group until 2007. As a result, Euro member states now have a stronger voice within the Union and, in particular, have a political counterpart to the powerful president of the European Central Bank, Jean-Claude Trichet.

Union objectives

In the Constitution, the scope of the Union's objectives is broadened to include social as well as

economic aims. Art. I-3 for instance states that the EU will not only attempt to achieve 'balanced economic growth and price stability' but also a 'highly competitive social market economy, aiming at full employment and social progress'. This passage also includes a commitment to 'combat social exclusion and discrimination and ... promote social justice and protection'. In defining and implementing EU policies and actions, moreover, the EU is now obliged to 'take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health' (Art. III-117). French pro-ratification politicians attach understandable importance in their public utterances to these new objectives and requirements. They are on solid ground when they argue these new elements show how wide of the mark are depictions of the Constitution as simply a recipe book for Anglo-Saxon capitalism.

Enhanced co-operation

Finally, the Constitution will make it easier for sub-groups of member states to increase their integration in the fields of taxation and social policy if they so desire. The provisions on enhanced co-operation make it considerably easier than before to establish such sub-groups within the Union (Art. I-44). While a national veto remains in the area of Common Foreign and Security Policy, enhanced co-operation on other matters can under the Constitution be instituted by qualified majority voting, without the right of veto

from individual member states not wishing to participate in the new sub-group. This innovation will certainly allow those member states most eager to build a 'social' Europe to intensify among themselves their social and economic integration. In an enlarged European Union, such integration is becoming progressively more difficult, and 'flexible integration' is seen by many as now the only plausible means of enhancing the socio-economic dimension of European integration, at least among some countries. It must remain doubtful, however, whether 'enhanced co-operation' can provide an answer to the perceived problem of 'social dumping.' Those countries accused by others of this practice, notably Britain and Central and Eastern European countries, are highly unlikely to join the relevant sub-groups which may be set up by others.

Criticism of the European Constitution in France

While the Constitution thus does move marginally towards rather than away from a 'social Europe', it is clear that the more radical hopes for a 'social Europe' were not met. Generally, the Constitution's critics in France and on the European left argue that it is unsatisfactory in three areas: economic and social rights, 'social and fiscal dumping', and economic governance.

Economic and social rights

While French critics of the Constitution on the whole accept that the Charter is a move in the direction of answering their concerns, they argue that its impact on actual legislation will be very low, as it only applies to Union law. The

'horizontal clauses', which form Title VII of the Charter, indeed state that the Charter is only addressed to Union-level organisations and will not extend the field of application of Union law or increase the powers of the EU. The Constitution does not set out minimum standards and guaranteed rights that apply to all EU member states in all policy areas. The Charter will not lead, it is argued, to the uniformly high standards that the EU should regard as its task to ensure.

Harmonisation of social policy and taxation

Opponents of ratification in France often argue that the European Union should be able to prevent what they see as 'unfair' outsourcing within the EU, believed in particular to be due to 'social and fiscal dumping' by new member states. They argue that the Constitution will not enable the Union to take necessary action in these fields and that it may also prevent national governments from doing so. These arguments form part of the broader anti-globalisation rhetoric which is widespread in France, in particular on the Left. Globalisation and trade liberalisation are seen in this context primarily as threats rather than opportunities. Whereas the European Union's promotion of liberalised trade was seen in the first stages of its existence as an overwhelmingly positive achievement, now there are many in France who see it as the Union's role to order and restrain trade liberalisation rather than to promote it.

It is certainly true that the fiscal and social harmonisation urged by some as an answer to 'social dumping' are not made any easier to achieve by the European

Constitution, as unanimity is still required in these policy areas. But the point needs to be made that to introduce majority voting into these new areas with a view to solving the supposed problem of 'social dumping' would have been a revolutionary change from existing practice, one which could never have commanded anything like a consensus within the Union's member states. Many European governments simply do not recognise the existence of such a problem as 'social dumping', arguing that it is unfair to burden poorer countries such as Poland or the Czech Republic with the social costs appropriate to richer countries such as France or Germany. Nor will making Poland or the Czech Republic less competitive in the European Union solve those problems for all the European Union's member states arising from the ferociously competitive economies of China, India or other developing countries. There are elements in the concept of a 'social' Europe about which a different and better consensus than that contained in the European Constitution might arguably have been achieved. The question of 'social dumping' is not one of them.

Economic governance

It is a frequent argument of those opposed to ratification of the European Constitution in France that the Constitution does not go far enough in providing Europe with a real economic government capable of fighting unemployment and protecting the European Social Model. They regret, for instance, that in the objectives set for the Union by the Constitution the commitment to a 'free and undistorted' internal market comes before the mentioning of a 'social

market economy' (Art. I-3). They point out that the Constitution notes no less than four times that the EU and the ECB have as their goal to achieve 'price stability' (Art. I-3 (3), Art I-30 (2), Art III-177 and Art III-185). They are unimpressed by Art. III-177 of the Constitution, which states that EU economic and monetary policy needs to follow the 'principle of an open market economy with free competition'. They criticise the continued independence of the ECB and argue that the budget of the EU is still too limited, and it will not allow the EU to finance a significant programme of public investment.

All these arguments are factually true, but it is hard to see their truth as turning the European Constitution into a step backwards from the point of view of 'social Europe.' References to free and undistorted competition within Europe figured in the original Treaty of Rome in 1957. The EU's budget is indeed small, but the Constitution does not make it smaller. There are few European governments that would be prepared even to contemplate ceding to the Union the degree of budgetary and political independence necessary for the European Union to pursue its own autonomous employment policy. While some member states might have been prepared to accept changes in the ECB's statutes, no unanimity on this point could ever have been achieved. Even if agreement had been achieved on the underlying proposal of amending the statutes, the nature of this amendment would have been (and will be for the foreseeable future) highly controversial.

In the continuing French debate about the European Constitution, it is difficult to avoid the impression that the most persuasive criticism for much of

the French electorate is that the Constitutional Treaty does not correspond sufficiently closely to an economic and social model which represents the majority of current French opinion. Whether the Constitution can be seen as an 'improvement' on the existing position, or whether its renegotiation is a politically realistic possibility do not appear to be considerations in the forefront of the debate. Large strata of the French electorate are simply asking themselves whether the European Constitution will be a substantial bulwark against the threats they perceive to the French social model coming from globalisation and the liberalisation of trade flows. Judged from this standpoint, the Constitution clearly appears unattractive to many French voters.

A Step too Far? Criticism of the Constitution in Britain

An ironic counterpoint exists in the United Kingdom to French concerns that the European Constitution does too little to entrench 'social' Europe. It is the complaint that the European Constitution does too little to entrench liberal economics in Europe. It has been an undoubted success of Eurosceptic argumentation in the United Kingdom over the past decade firmly to identify 'Brussels' as the unremitting source of illiberal and unnecessary regulations. The British 'Vote No' campaign has already convinced many British businesses that the EU and, more specifically, the European Constitution would have negative consequences for the British economy. In a recent MORI poll of finance directors published in the *Financial Times* on 12 April, 70 per cent said they were opposed to

ratification, with only 26 per cent generally in favour and just 4 per cent strongly in favour of the Constitution. These 70 per cent share the vigorous distaste of the French left for the Constitution, but the reasoning which has led them to the same conclusion is diametrically opposite to that of their neighbours.

While in France there is something like a consensus that the Charter of Fundamental Rights should have gone further in its creation of European social guarantees, in this country there is something like a consensus among the Constitution's opponents that the Charter goes too far in this direction. These opponents insist that the economic and social rights described above will have a significant impact on member states and national legislation, leading to a weakening of the UK's flexible economy. It is, however, clear from the explanations of the Charter's objectives annexed to the Constitution that the Charter of Fundamental Rights is firmly grounded in the Union's existing Social Chapter and directives which have already been adopted. The disappointment of the French left with the additional social impact of the new Charter is well-grounded.

Nor is there any obvious substance in the claim from some of its British opponents that the European Constitution is leading towards greater harmonisation of social policy and taxation within the EU. A paragraph of the Constitution often pointed to by the 'Vote No' campaign, Art. III-210 (2), states that in these policy areas 'European laws or framework laws may establish measures designed to encourage co-operation between Member States.'" But

these measures are limited by the Constitution to 'initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences'. This is not sovereignty-pooling along the traditional model of harmonising European legislation, but something altogether less constraining, amounting to little more than simple international co-operation. Moreover, potential EU legislation on matters related to social policy will not affect member states' right to 'define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium of such systems' (Art. III-210(5)).

In a final mirror image of the French debate, there are some concerns in this country that the Constitution will increase EU powers over general national economic policy. Art. I-15 states that, 'The Member States shall coordinate their economic policies within the Union. To this end, the Council of Ministers shall adopt measures, in particular broad guidelines for these policies'. This may sound impressive, but its underlying meaning is by no means as far-reaching as the terminology might suggest. The European Union already has a system of Broad Economic Policy Guidelines (BEPGs) in place, a system which is neither onerous nor stringently enforced. It involves regular reports by member states to the Commission, which will consider the internal consistency of these reports and observe their implementation. If the guidelines are not followed, the Council can issue a warning and recommendations to the member state, but no more. The European Constitution says little that is new about the 'economic governance' of

the Eurozone beyond formalising the work of its members when they meet together. It certainly does not represent any shift towards a more centralised method of running the single European currency than is currently the practice.

Conclusion

It is ironic that in both France and the United Kingdom so much of what debate has taken place on the European Constitution has centred on economic and social questions. The Constitution contains important institutional changes, but its effect on European or national socio-economic policies will be minimal. Both French calls for a 'Social Europe' and British appeals for a 'Smaller Europe' are thus criticisms that the Constitution has not changed enough in a particular direction. What the French Left and British Eurosceptics criticise, then, is not the European Constitution, but the status quo of the European Union, which that Constitution largely reflects. The economic philosophies which predominate in France and Britain are clearly distinct, more liberal in the United Kingdom and more 'socially' oriented in France. The European Constitution did not attempt to decide between those two economic philosophies, beyond reaffirming that existing equilibrium established over the past fifty years of the European Community and European Union's existence. This equilibrium, based not least on the jurisprudence of the European Court of Justice, has elements of both liberal and social thinking within it. Agreement to adopt the European Constitution last June might well have been impossible on any basis decisively favouring one side of the argument or the other. The Constitution is a compromise, in its economics as

much as in its politics. If it is rejected by either the French or British electorates, it will strongly suggest that the French or British electorates are unprepared to accept compromises for the sake of further European integration. The implications of that new reality would be profound.

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