

**THE FEDERAL TRUST**  
*for education & research*

*Enlightening the Debate on Good Governance*

# **Plea for a European Constitution**

JOHANNES RAU



# **Steps towards a European Constitution**

JOHN PINDER



**European Essay No.16**

## **A Definition of Federalism**

Federalism is defined as 'a system of government in which central and regional authorities are linked in an interdependent political relationship, in which powers and functions are distributed to achieve a substantial degree of autonomy and integrity in the regional units. In theory, a federal system seeks to maintain a balance such that neither level of government becomes sufficiently dominant to dictate the decision of the other, unlike in a unitary system, in which the central authorities hold primacy to the extent even of redesigning or abolishing regional and local units of government at will.'

(New Fontana Dictionary of Modern Thought)

---

### **Patrons**

Lord Briggs  
Sir Bernard Burrows  
Rt Hon Lord Cockfield  
Sir Brian Corby  
Lord Ezra  
Lord Forte  
Sir Michael Franklin  
Sir Arthur Knight  
Sir Donald Maitland  
Baroness Nicholson of  
Winterbourne MEP  
Rt Hon Sir Michael  
Palliser  
Lord Plumb  
Lord Roll of Ipsden  
Rt Hon Lord Scarman  
Rt Hon Lord Thomson of  
Monifieth  
Carole Tongue  
Sir Brian Urquhart  
Sir Peter Ustinov

### **Director**

Dr Martyn Bond

### **Chairman**

John Pinder OBE

### **Council**

Andrew Adonis  
Anna Arki  
David Barton  
Professor Iain Begg  
Graham Bishop  
Dr Michael Burgess  
Mandy Cormack  
Alison Cottrell  
Geoffrey Denton  
Robert Emerson  
Dr Nigel Forman  
Maurice Fraser  
Baroness Sally Greengross OBE  
Claudia Hamill  
Isabel Hilton  
Jonathan Hoffman  
John Leech  
Baroness Ludford MEP  
Peter Luff  
Nicolas Maclean  
David Martin MEP  
Dr Richard Mayne  
Professor Jörg Monar  
Professor Roger Morgan  
Marie-Louise Rossi  
John Stevens  
Lord Taverne QC  
Dr Richard Whitman  
Ernest Wistrich CBE

---

The views expressed in this European Essay are the views of the author only. They are not necessarily shared by the Federal Trust. As a registered educational charity the Federal Trust holds no political views of its own.

**THE FEDERAL TRUST**  
*for education & research*

**Plea for a European  
Constitution**

JOHANNES RAU



**Steps towards a  
European Constitution**

JOHN PINDER



*Enlightening the Debate on Good Governance*

# European Essay No.16

© Federal Trust for Education and Research, 2001  
ISSN 1468 9049  
ISBN 1 903403 30 8

**Johannes Rau** was elected president of Germany in May 1999. He is a moderate Social Democrat and the former head of Germany's most populous state, North Rhine-Westphalia.

**John Pinder** is Honorary Professor at the College of Europe in Bruges and Chairman of The Federal Trust for Education and Research. He previously was Director of the Policy Studies Institute.

# Introduction

Friends of The Federal Trust who are regular readers of these European Essays have followed the development of the public debate on the future of Europe with growing interest for a year or more. From Joschka Fischer's clarion call for federal Europe in his Humboldt lecture last May, through Jacques Chirac's more inter-governmental reply in June, to Tony Blair's Warsaw speech in October, this series of European Essays has faithfully put on record for teachers the thoughts of political in the major states. Others, too, have contributed to the debate – the French and British Foreign Ministers, the former Italian Prime Minister, for instance – and the German Chancellor's party, the Social Democrats, have drafted a wide-ranging discussion document that may well be endorsed as party policy later this year at their next Party Congress. Numerous articles have appeared in academic journals and in the press, and programmes have been made for the more popular broadcast media, even if still essentially aimed at informed opinion. A public discussion is now underway, with contribution aimed firstly, at influencing the Belgian Presidency of the Council as it prepares the Laeken Declaration for December this year, and secondly, with a view to influencing the wider debate in civil society that is called for by the Treaty of Nice, in anticipation of the next IGC in 2004.

Now in a new and influential voice, the German President, Johannes Rau, has put on record the views of his office. In a speech to the European Parliament in April he called for .....

Taken in conjunction with Joschka Fischer's speech which opened the great debate and with the SPD paper which is likely to fix German European policy later this year, this authoritative statement merits close attention. It calls for greater democracy in the institutions of the European Union and for a structure to which the man and woman in the street can easily relate. Hence the president's call for the Council of Ministers to act like a Senate in legislative matters and to be constituted as such. Although he does not allude to it in his text, the consequence could be that the Council of Ministers will pass up to the European Council, however unwillingly, the policy-making role it has exercised to date, letting Heads of Government take over, in particular, the role of co-ordinating policy in different fields, which the General Affairs Council (composed of Foreign Ministers) has failed to perform adequately in recent years. They might also take the function of foreign policy oversight and checking the legitimacy of Union proposals in terms of subsidiarity which Tony Blair in his Warsaw speech had otherwise suggested should be exercised by a Third Chamber of deputies drawn from national parliaments.

Johannes Rau's clear proposals are both within the bounds of realistic expectation and far-sighted enough to respond to the need for visionary change. He calls for the Union to put in place institutions which function in ways that citizens understand and, not surprisingly, he has in mind the German model. At the same time he wants to endow those institutions with the powers that will ensure a qualitative change in decision-making and decision taking in the Union, to overcome the democratic deficit and to respond to the challenge of Enlargement.

## European Essay No. 16

John Pinder's essay goes further still, building on the best suggestions in the great debate so far and doing so from a resolutely federalist standpoint. His proposals – like Johannes Rau – comprise both small and practical steps and larger qualitative changes required to confirm the federal status of existing arrangements and to open perspectives that take the Union further in that direction. For him the *'finalité politique'* of the Union is self-evident, and as most readers digest his argument they will see that we are further along the road to that goal than many more sceptical voices are prepared to acknowledge. This is a development to be welcomed, not feared or regretted, and the German position is one that federally minded readers in all countries should support.

The importance of the great debate may well be harder to grasp and it may be more difficult to contribute to it from a country like Britain that has a history of less than whole-hearted support for the Union and its activities. London is not as distant geographically from Brussels as are Oslo and Bern, but economically we are as distant as they are from Frankfurt, and absence from the structures of economic and monetary union weakens the British Voice. Britain needs to ensure in the great debate, that not just the cautious voice of government, but the range of views that characterise the variety of our rich civil society and our experienced political class are all heard and noted, in circles where decisions are formed before they are formally taken. This pamphlet is a contribution to that process. The Federal Trust's European Essays will continue to broaden, to deepen and to enlighten that debate.

**Martyn Bond**  
**Director of The Federal Trust**  
**June 2001**





Strasbourg / 04.04.2001

# **Plea for a European constitution**

**Johannes Rau**

## ***Speech to the European Parliament***

Madam President, Members of the European Parliament, I would like to sincerely thank you, Madam President, for inviting me to express my thoughts on the future shape of Europe to this House today.

Europe is becoming ever more concrete, ever more tangible for its citizens because it is having an ever greater impact on their lives. In 271 days, citizens in twelve European countries will have a single currency in their pockets. We can travel freely in Europe, from the North Cape to Gibraltar. But do we also feel European?

I agree with that great European journalist, the Italian Luigi Barzini, who once said that despite the indisputable great diversity and differences, we are basically all of the same kind.

We have a rich stock of common traditions. Winston Churchill pointed this out in his famous Zürich speech in September 1946. He believed

that our common European heritage was made up of the Christian faith and Christian ethics, of culture, the arts, philosophy and science from antiquity to modern times.

We all know very topical examples which demonstrate that there are common European interests. Does not globalisation, if nothing has done so beforehand, force us Europeans to realise that

- \* the diversity of our cultural wealth must not become the victim of uniformisation?
- \* the challenge to our values posed by fundamentalists and ethnic cleansing in Europe requires a joint response from us?
- \* the market must not be given free rein but, rather, must be kept in check in both social and ecological terms?

Today we are witnessing the great attraction of the European Union for many countries. This is certainly for quite practical reasons and it is true that the European Union is a boon to all its members. But it is more than a mere marriage of convenience. Europe represents a certain ideal of human existence, of people living together. That is why we endeavour time and again to strike a balance between freedom of the individual and his responsibility within society and the community.

Not even the greatest visionaries of the fifties could ever have imagined how concrete European integration would become or how many spheres it would cover. The successes of our joint action should strengthen our resolve to strive to achieve new objectives.

However, we must be self-critical and admit that although there is widespread agreement, many citizens are sceptical or even suspicious, they mistrust or indeed reject the European integration project. What matters, in my opinion, is that doubts and criticism are not so much

## European Essay No. 16

directed against concrete steps and their impact. The vast majority are aware

- \* how much it means to live together in peace after centuries of hostility,
- \* how much we have succeeded in increasing our prosperity together,
- \* how many advantages the single market offers to our companies,
- \* how much better we can research within the framework of European co-operation,
- \* that being able to settle or set up in business in other European countries without any great difficulties represents progress,
- \* that an increasing number of training and professional qualifications are recognised Europe-wide.

What concerns people in Europe is how the not very transparent integration process is organised and how little influence they seem to have on it. Many citizens are rightly asking:

- \* who is actually driving the locomotive of the European integration train?
- \* what are the rules on speed?
- \* what are the traffic regulations?
- \* which course will be set and where?
- \* which carriages will be coupled up or uncoupled?
- \* and what is our destination?

These are not academic questions. They are questions which are being asked in all European countries by the sovereign, that is to say by the people. There can be no doubt that no one but the sovereign of each of our European democracies, the people, can decide on all of these issues.

I sometimes hear it being said that a democratic process in the traditional sense is not possible in Europe because there is no single European nation. Certainly, today there is no European nation and no European public comparable to those in the individual member states of the European Union. However, that should not prevent us from strengthening the principles of democracy at European level.

Democracy, rightly understood, simply means that people who want to act together to achieve a certain goal, create common rules and procedures for this. This is not inconsistent with the fact that in other respects these people have very different interests and want to see these differences preserved.

That is our aim in Europe: we want to pursue certain objectives and interests together and, at the same time, preserve the diversity of the European countries and nations which forms the basis and enriching uniqueness of the European Union. Nothing will, nor should, change here in future.

We must therefore answer the following questions:

- \* How can we organise the European Union in such a way that citizens can find their way around it better?
- \* What must we do to ensure that decisions made by the European Union have a broader legitimacy at European level?
- \* How, finally, should the organisational framework look?

I am firmly convinced that the answer can only be: we need a European constitution.

The European constitution is not the 'final touch' of the European structure, it must become its foundation. The European constitution should prescribe that Europe will not become a centralised superstate but, rather, that we are building a federation of nation-states.

I am aware that some people in Europe are suspicious of the terms 'constitution' and 'federation'. But is this not often merely a dispute about terms? I am confident that it will be easier to reach agreement on the substance of what is meant than on these terms. Then, however, we must discuss this substance rather than argue about terms. The European constitution must be the result of a broad discussion in all countries of the European Union.

There are sceptical and critical voices in this debate; there are many important objections which I take seriously even if I personally have a different opinion. I would like to examine a few of them today and I would also like to explain to you how I think a European constitution should look and how we should proceed.

According to one argument against a constitution which is frequently put forward, every additional step in the integration process is a further step towards a European 'superstate' and towards the abolition of nation-states.

But those, like me, who support a federation of nation-states, want quite the opposite!

If we transform the EU into a federation of nation-states, then we will enhance the democratic legitimacy for joint action while, at the same time, safeguarding the competences of the nation-states which they want to and indeed should maintain. New areas of responsibility can only be transferred to Europe if all members of the federation agree to it in a transparent and democratically controlled procedure.

Preserving what has been achieved so far, preventing what is not wanted and remaining open to new ideas - that is the basic idea behind a constitution for a federation of nation-states.

That is what I would like to talk about.

No one wants to do away with the nation-states and their sovereignty. On the contrary, we will need them and their distinctness for a good while yet, as guardians of diversity in Europe.

One argument sometimes presented in a concealed manner and sometimes openly is that a federation of nation-states would actually be a Europe 'à la Federal Republic of Germany'!

However, anyone who takes a closer look will see that this idea of a federation has met with approval for quite different reasons: the systems of government of our European countries have grown historically or, in other words, they are different democratic responses of equal value to certain developments in history. And it is precisely because Europe is not moving towards a single centralised state, nor should it, that we must find a basic political principle which is in keeping with this desire, preserves our different traditions and which takes into account the situation in Europe today. This basic political principle is the federation.

A federation is characterised by the fact that every member state makes its own sovereign decisions on its constitution and system of government. I do not want Europe to decide on the Federal Republic of Germany's system of government any more than I want to prescribe to others how they organise their own countries. I would never dream, for example, of propagating a federal solution for the Kingdom of Denmark, the Hellenic Republic or the Kingdom of Spain or some day for the Republic of Hungary which they do not want! We therefore need a constitution for the very reason that we do not want to become a single centralised state.

What function does a constitution have for a polity? A 'grammar book of freedom' and, particularly here in Europe, a 'grammar book of solidarity'. With it the sovereign, the people, determines to which values it is committed, in which spheres and to whom it delegates power and how it wants to organise and limit this power. And finally, a constitution determines who is responsible for what. These are the elements which should be included in a constitution for a European federation of nation-states.

It should comprise three parts:

The first part should be based on the Charter of Fundamental Rights proclaimed at the European summit in Nice. It is to have a binding power on the actions of European institutions and the member states where they implement European law. The catalogues of fundamental rights of the member states and the European Convention on Human Rights are not affected by this.

The second part of a European constitution must divide competences between the member states on the one hand and the European Union on the other with the necessary clarity. It would thus largely determine the relationship between the member states and the federation.

We should endeavour to anchor the principle of subsidiarity on a broader basis: only those matters should be decided at European level which the member states cannot better deal with themselves. That must be our guiding principle!

Everything not expressly referred to in the constitution as a European competence should therefore remain a national competence. In order to counter the fear of creeping centralisation in Europe, I believe we should consider a further step: expressly defining the competences

which are reserved for the member states. I would like to name two examples: it must be possible for member states to go their own way within the framework of a European social policy when it comes to providing for pensioners or within the framework of environmental policy when it comes to promoting renewable energies. Of course, I know that even an ideal delimitation of competences will not spare us conflicts in future.

I agree with Prime Minister Jean-Claude Juncker and many other Europeans that we should not prescribe what the EU should never be allowed to do. The constitution must provide that competences may be regulated differently if the federation members make a unanimous decision to do so.

In addition to the Charter of Fundamental Rights and the delimitation of competences, a third part of the constitution should lay down Europe's future institutional framework.

I spoke of the concerns of many citizens who have experienced or have the feeling that they have too little influence on how quickly, in what direction and to which destination the European integration train is travelling. They believe that democratic rights are being violated. We must therefore place the question of Europe's democratic legitimacy at the centre of this discussion.

I believe that the Parliament and the Council of Ministers should be developed into a genuine bicameral parliament.

The Council of Ministers should become a chamber of states in which each state, represented by its government, would cast its vote. This chamber would preserve the nation-states' sovereignty.



You, the Members of the European Parliament, should become a citizen's chamber. The two chambers should make decisions on an equal basis in all spheres in which legislation is made.

Much of the criticism about Europe is directed at the Commission: sometimes the criticism is justified, but often the Commission is merely made a scapegoat. I know the tendency of al-most all national governments to denounce decisions they have made themselves at European level as the product of European regulatory frenzy if there is any opposition in their own countries. I am sure that you are aware of this.

However, that does not change the justified criticism that, in view of the important role it plays, the Commission's work lacks democratic legitimacy. We must change this. You know that there are two models for this:

\*the election of the President of the Commission directly by the people,

or

\* the election of the President of the Commission by the two chambers of Parliament.

I prefer the parliamentary model in which the Commission has the support of a parliamentary majority. However, regardless of which course we decide to take for the constitution: a stronger parliament with two chambers and a Commission which has greater democratic legitimacy can provide the European idea with crucial new impetus.

The citizens of Europe will be more interested in what happens in Brussels, Strasbourg and Luxembourg and they will also identify more closely with it even if they do not agree with individual decisions.

I am convinced that a stronger parliament would also help to ensure that the parties are not only European in name but conduct themselves as such.

Reform of the European institutions would also help to ensure the development of a broader European public. We need that. Even now there are issues which concern people all over Europe: just think of the Euro, its internal stability and its external value, just think of peace in neighbouring regions, of the desire for healthy food or of the rules according to which football players may transfer to another club within Europe.

In the constitution debate we must ensure that the Commission continues to defend Community interests. This anchor of the European integration process, the Commission's right to initiate legislation, must remain. The debates of the last few months have shown that the inter-governmental method has reached its limits. And we still have a Europe of 15!

We all know that in politics it is not only the right objectives which matter but also how best to achieve them. How, then, should the road to a European constitution look, the 'Process for the Future of Europe', as it is so aptly called?

The debate on Europe's future should be conducted on a wider basis than in a traditional intergovernmental conference.

Many people were sceptical when the Convention on the preparation of the Charter of Fundamental Rights of the European Union was set up in 1999. You will probably agree with me that seldom in the last few years has a European body done such good work as this Convention. I regard this as exemplary.

We should therefore debate Europe's future in a broad forum in which, in addition to government representatives, the members of national parliaments and, of course, of the European Parliament, must play an important role. This forum should prepare the necessary decisions as far as possible.

We should take a lot of care and make every effort to ensure that the debate on Europe's future is not only conducted in expert circles. We must include all interested citizens. I agree with my Italian colleague, President Azeglio Ciampi, and many others, that we must also include the citizens of the candidate states. The future European constitution will also be their constitution.

Ladies and gentlemen, make use of your rights as freely elected Members of Parliament. Grasp the opportunities you have to advance Europe. You have more influence than many believe. Help to make Europe more relevant to the everyday lives of citizens in our countries. You have achieved much already. Continue along this path. You have my support.



# Steps towards a European Constitution

**John Pinder\***

The European Union needs a democratic and effective system of government. Without this, it cannot ensure the strong rule of law which is an essential framework for a prosperous and dynamic market economy. Nor will it be able to develop an adequate foreign and security policy. Nor will the democratic systems of the member states flourish if they are unable to satisfy the citizens' basic needs for prosperity and security. For this, they must be complemented by an effective democratic system at the EU level.

The basic principles of such a system are the rule of law based on fundamental rights and the enactment of laws and control of the executive by representatives of the citizens and, since the EU is a multi-state polity, of the member states: in short, the principles of a federal system, with the competences required to discharge its responsibilities given to the federal institutions while other competences remain with the states.

The attribution of the necessary competences, together with the federal institutions, would give the Union the framework for satisfying

---

\* John Pinder is the Chairman of the Federal Trust. But he, not the Trust, is alone responsible for the views expressed in this Essay.

these needs. But a constitution that is not based on those basic principles would be worse than the present treaties, because it would entrench a system which is already inadequate; which would, if not suitably reformed, become increasingly ineffective as the number of member states grows; and which would be undermined by centrifugal forces unless the democracies of the states are balanced by a democratic structure for the Union.

The Union's institutions and powers already embody many of the elements of a federal system, so that the creation of a federal constitution can be considered, not only as a matter of drafting an entirely new document, but also from the perspective of reform of the existing treaties. This is of no small importance from the standpoint of the empirical political tradition, giving preference to the reform of what exists rather than the creation of something altogether new. Presenting the key changes necessary to establish a federal constitution in the shape of a reform of the treaties would also help to make clear to all the governments and citizens what is required in the transition to a federal polity, enabling them to understand better what is involved and hence, it may be hoped, accept it before a group of states could, as Joschka Fischer suggested in his speech on 12 May 2001, proceed to create a 'centre of gravity' within the Union, moving towards a federal system without waiting for all to participate.<sup>1</sup>

### ***Nice Declaration and Laeken Declaration***

The Declaration on the Future of the Union, annexed by the European Council to its text of the Treaty of Nice, offers the Belgian Presidency in the second half of 2001 a key role in launching the process of 'wide-ranging discussions with all interested parties' which is to comprise a

'deeper and wider debate about the future development of the European Union'; and the European Council at Laeken in December 2001 is to issue a further Declaration containing 'appropriate initiatives for the continuation of this process.'

The Nice Declaration offers scope for placing the main elements of a federal constitution on the agenda. It specifies the division of competences between the EU and the member states, the status of the Charter of Fundamental Rights, the role of national parliaments and a simplification of the Treaties 'with a view to making them clearer and better understood without changing their meaning.' But, perhaps because it appears in the paragraph following the list of these four points, discussion of the Declaration has tended to ignore the most important point of all: 'the democratic legitimacy and transparency of the Union and its institutions.' Nor has it been generally noticed that the list is preceded by the words '*inter alia*,' implying that other elements such as enhancing the efficacy of the executive and consolidating the rule of law may be added. It is useful to consider the relationship between the existing treaties and a federal constitution in all these respects.

## **Relationship between the EU Treaties and a federal constitution**

### ***Division of competences***

The key reforms to convert the EU into a federal system concern the powers of its institutions rather than its competences. The EU already has most of the competences that are strictly necessary. The problems lie, rather, with the institutional arrangements and the instruments for dealing with them. There will be shopping lists for adding

competences; and the principle of subsidiarity might well justify the repatriation of some others.<sup>2</sup> But the purpose here is to indicate how far the Union already has those that are essential for a viable federal system: what Fischer aptly called a 'lean' federation.<sup>3</sup>

Thus in the economy, the provisions for single market, sectoral policies, single currency and budget provide much of what is required; the main deficiencies are institutional, such as the opt-outs from the euro. These weaken the Union by fragmenting the single market and reduce its potential for providing a balance to the dollar's hegemony which would enable the Union to help develop a stable world financial system. Beyond the short term, the states that opt out are exposed to the most damage, both economic and political. But their absence also damages the Union as a whole.

The Union likewise has most of the competences it needs in the field of the environment, though its weight in negotiations on global warming would be enhanced if the procedures it employs for trade negotiations were to apply.

As regards social policy, the field of the welfare state, where patterns depend on local political cultures, should remain within the exclusive competence of the states. Co-operation among member states is doubtless desirable, but should not be subject to Community legislation. It could take place in a separate pillar of the Union designed for fields where co-operation, not integration, is appropriate.

'Social policy,' in the sense employed in Union parlance, with the focus on labour relations, is likewise dependent on the political and social cultures of member states. Some aspects are also closely connected with the single market, which provides a justification for common Union policies in this field. But they should be kept to a minimum. This does



not imply a preference for low levels of social protection, merely that diversity among member states and the principle of subsidiarity make integration generally inappropriate. Here again is a field which could belong in a pillar designed for co-operation.

With respect to freedom of movement, the Schengen *acquis* has been transferred from the third pillar to the Community, though the application of normal Community procedures awaits a unanimous decision stipulated by the Treaty to be taken three years from now; and the British government has stated it will participate fully in Schengen, save in aspects relating to frontier controls for which it awaits evidence that the external frontier controls and internal co-operation are sufficiently effective.

It is in the second pillar that the Union's weakness is most pronounced, though here again it is the institutions more than the competences that are inadequate. Proposals have been made, by Germany among others, to move aspects of foreign policy other than those relating to defence into the Community pillar, thus enhancing effectiveness and facilitating coordination with the Union's powerful instruments of external economic policy. Experience in the Balkans has moreover shown that a bigger budget to support external operations, which can be deployed with less dilatory procedures than hitherto, is likely to be desirable.

It would not be wise to force the pace towards integration of armed forces, however, before the Union has its own solidly democratic institutions to carry the responsibility for them. But foreign and security policy that is not defence-related should be moved by stages into the sphere of the normal Community institutions; and a federal constitution should commit the states to eventual defence integration, though without specifying a fixed timetable, at least until the Union's

institutions have proved themselves to be sufficiently democratic and effective.

### ***Institutions and citizens***

*Democratic legitimacy and transparency.* The principles of representative democracy require that the Union's legislation be enacted and its budget adopted by the representatives of the citizens as well as, in a federal system, of the states.

Thus co-decision of the Parliament with the Council should apply to all the Union's legislation instead of somewhat over half of it. The procedure for 'compulsory expenditure' that gives the Council more power than the Parliament in adopting the agricultural expenditure still accounts for nearly half the budget; and the Council can hardly be congratulated on the way in which it has used this power. The procedure should be abolished, thus giving the Parliament and the Council broadly equal powers for adopting all of the budget as well as of the laws.

The European Council, in its Nice Declaration, underlined the need to improve the democratic legitimacy and transparency of the Union and its institutions, to bring them closer to the citizens. But it did little to increase the powers of the citizens' elected representatives in the Parliament. It also failed to require the Council to legislate in open session; and it made matters worse by introducing a triple system for qualified majority voting that is impossible for most people to understand. The double majority of states and populations would be greatly preferable. Qualified majority voting should, moreover, be the general rule for legislation, save in some fields where the principle of subsidiarity would justify the autonomy of member states - and it is questionable whether such fields should be subject to Community legislation at all.

The suggestion that member states' parliaments send delegates to what is usually described as a second chamber does not give due weight to the problems raised by what, if it is to have adequate substance, would in fact be a third legislative chamber, since the Council is already a legislative chamber in which the member states are represented.<sup>4</sup> As President Rau put it in his address to the European Parliament, the two existing chambers should be developed into a genuine bicameral parliament.<sup>5</sup>

*Enhancing the efficacy of the executive.* The Commission already fulfils a number of the functions of a federal government in the fields of Community competence; and an EU constitution should give it the powers to act as an effective government in these fields.

A necessary condition for this is that the Commission should be, and be seen to be, an executive with full democratic legitimacy. The idea of a directly elected Commission President, suggested by Fischer, has attracted some support. But most European states have a parliamentary executive; and that is preferred by President Rau, who proposes the election of the President of the Commission by the two chambers, i.e. the Parliament and the Council.<sup>6</sup> Lionel Jospin too proposes that the accountability of the Commission to the Parliament be strengthened, through appointment of the Commission's President 'from the political group which wins the European elections.'<sup>7</sup> A parliamentary executive not only reflects British and most other European political cultures, but also builds on the present procedure for appointing the Commission President. It also makes the procedure more transparent to the citizens, and strengthens representative government by linking the European elections more evidently with the appointment of the Commission.

*The rule of law.* The Union's judiciary is already closer to that of a federation than are the political institutions; and the Nice Treaty introduces a number of improvements, mostly of a procedural character. A federal constitution should, among other things, clarify the role of the Court of Justice as regards the functions of a supreme court.

*Fundamental Rights.* Citizens need to be assured of judicial recourse if the Union's institutions fail to respect their rights. In line with the concept of a lean federation, this could be limited to the classical rights which pertain to a system of representative democracy. That in no way implies that social rights are unimportant, but only that, because they relate so closely to national political and social cultures, there is a respectable case for leaving the states with the responsibility for their own arrangements in this field. But the core rights at least must be justiciable in a federal Union, in a way that is absolutely clear to the citizens.

It is also necessary that all member states respect these rights in their internal affairs, since the representatives of their governments and citizens share in the government of the Union itself. The Nice Treaty improves the procedures for suspending various rights of membership of a state that falls too far short of respecting them; and a federal constitution would have to provide adequate powers in this respect.

### ***A simplified treaty***

The Union will not be sufficiently democratic nor, therefore, effective beyond a fairly short term, unless its constitution is comprehensible to citizens. A simplified treaty, as the Nice Declaration termed what would better be called a basic treaty, could contribute much to help them understand the Union as it stands today ('without changing the meaning of the Treaties,' as the Declaration puts it) and to appreciate

what has to be changed if the Union is to become properly democratic and effective.

It is essential that citizens be able to understand where the responsibility lies for enacting the laws that they must respect and for adopting the budget that determines how their money is spent. It is a grave defect in the Union that the system is such that few can understand it. A simplified treaty which made the system as clear as possible would be a valuable starting point. Unfortunately it is so complex as to make the task of drafting such a treaty extremely difficult, as the first attempt to do so has demonstrated.<sup>8</sup> Two conclusions can be drawn from this. First, that further efforts should be made to draft a simplified treaty that does clarify these matters which are critically important for the citizens; and secondly, that a legislative system which is so hard to explain is unacceptable and eventually unsustainable.<sup>9</sup> One of the bases for the process to be launched at Laeken must be a draft simplified treaty that goes as far as possible to clarify the existing legislative procedures, accompanied by an analysis which shows what changes are required to make the system effective and democratic.

### ***Steps towards a constitution***

A great merit of the Nice Declaration is to encourage a wide debate on the future of the Union rather than, as too often in the past, to concentrate discussion in meetings of a small number of officials and ministers.

The Laeken Declaration of December 2001 should launch a strong participation in the process on the part of wider political circles and of civil society. While this will evoke contributions with a wide range of

viewpoints, the Permanent Forum of Civil Society, set up by the international European Movement, has shown that non-governmental organisations can make constructive proposals for the Union's development and democratisation.

The process also needs an institutional focus in a more open form than those that have preceded previous Intergovernmental Conferences. The Convention which drafted the Charter of Fundamental Rights, with the participation of members of the European Parliament and member states' parliaments as well as representatives of the governments and the Commission, offers an attractive pattern. President Chirac is among those who have suggested that such a Convention participate in the process leading up to the 'Conference of the Representatives of Governments of Member States' that the Nice Declaration stipulated for 2004.<sup>10</sup>

There is likely to be enough support in a Convention from parliamentarians and representatives of some governments to ensure that among the proposals which emanate from it will be those on such key constitutional questions as full co-decision, both legislative and budgetary, of the Parliament with the Council; open legislative sessions of the Council and general application of the procedure of voting by double majority of states and populations; the election of the President of the Commission by the two legislative chambers; guarantee of a core of fundamental rights; the ending of opt-outs, in particular with respect to the euro; and commitment to a further process of defence integration. If these were accepted by all member states, the ICG 2004 could launch amendment of the treaties that would then embody the main elements of a federal constitution.

On present policies, Britain's Labour government would not accept most of these reforms and a Conservative government would be adamantly

opposed. Germany would favour such reforms across the board and might be inclined to pursue Joschka Fischer's project of a 'centre of gravity' of states moving towards federation within the Union, hoping the others would in due course be attracted to join. While there would be some support for this in France, the prevalent French view is more intergovernmental. President Chirac has proposed instead a 'pioneer group,' co-ordinating by intergovernmental means its deeper integration through enhanced co-operation in a number of fields such as economic policy, defence and security policy, and the fight against organised crime.<sup>11</sup> Lionel Jospin for his part prefers further integration with 'enhanced co-operation' in several fields by various groups of member states.<sup>12</sup> The Labour government might well be inclined to support institutional reform that strengthens intergovernmental co-operation on the grounds it accords better with British political traditions.

But the tradition with which it accords is, unfortunately, that of the decline of parliamentary representative government in favour of the executive. While the French political tradition is, for historical reasons, more presidential than parliamentary, the British tradition is surely closer to the parliamentary pattern preferred by Germany for the Union's institutions - not surprisingly, perhaps, since Germany's post-war democracy is based on a constitution that drew heavily on British as well as American experience, choosing a parliamentary rather than a presidential executive. British support for the key institutional reforms of the Union would be likely to shift the balance towards their acceptance by the Union as a whole. This would not only avert any prospect of division between ins and outs, which would be bad for the ins and worse for the outs. It would also enable the Union to expand in the coming years to include thirty states or more as a strong and democratic federal polity.

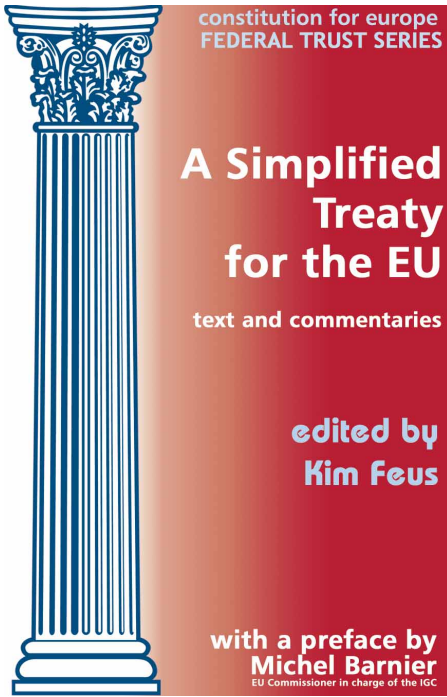
**Notes**

- 1 Joschka Fischer, From Confederation to Federation: Thoughts on the finality of European integration, speech given at the Humboldt University, Berlin, 12 May 2000, translated and reprinted in *European Essay* No.8 (London: Federal Trust, 2000), p.22.
- 2 This is proposed, with particular reference to areas of agricultural and structural policies, in the draft policy document prepared for the SPD's national conference for 2001: SPD-Bundesparteitag Nürnberg, 19-23 November 2001, Leitantrag: Verantwortung für Europa, Entwurf (Stand 30 April 2001), Section 9.
- 3 Op.cit., p.19.
- 4 This question is raised by Tony Blair's proposal for a 'second chamber of the European Parliament' with the limited function of overseeing the division of competences between the Union and the member states. See Tony Blair, Superpower - not Superstate?, speech given in Warsaw, October 2000, reprinted in *European Essay* No.12 (London: Federal Trust, 2000), p.21.
- 5 See p.14 above.
- 6 p.15 above.
- 7 Lionel Jospin, 'On the Future of an enlarged Europe,' speech given in Paris on 28 May 2001.
- 8 The draft of a Basic Treaty, produced by a group at the European University Institute, is reprinted, together with chapters by ten authors commenting on it, in Kim Feus (ed.), *A Simplified Treaty for the European Union* (London: Federal Trust, 2001).
- 9 An attempt at clarification has been made in John Pinder, 'Clarifying the Treaties for the Citizens,' in Kim Feus (ed.), *ibid.*
- 10 Jacques Chirac, Our Europe, speech given at the Bundestag, 27 June 2000, translated and reprinted in *European Essay* No.9 (London: Federal Trust, 2000), p.17.
- 11 *Ibid.*, pp.15-16.
12. Op. cit.



# A Simplified Treaty for the EU

edited by Kim Feus



THE IDEA for such a reorganisation was originally presented in the Commission's opinion on the last IGC at Amsterdam and then taken up in the Dehaene/Weizenäcker/Simon (The Three Wise Men) report on the institutional implications of enlargement. The European Commission subsequently requested the European University Institute in Florence to carry out a feasibility study on the idea of a Simplified Treaty. The EUI produced a draft Basic Treaty of the European Union - a simplified, coherent Treaty which incorporates the essential constituent elements of the Union.

As a result of various changes and additions over many years, the Treaties undoubtedly are lacking in transparency and clarity in their present state. The

proposed Treaty text does not make any changes to the substance of current Treaty provisions, but restructures and consolidates in a more accessible way the articles setting out the institutional framework and the operating rules of the Union and the EU's policy objectives. The contributions in this volume analyse the draft Basic Treaty and comment on whether this reorganisation actually makes the Treaties clearer and more accessible to Europe's citizens. In doing so, they pose another question: is a simplification sufficient or has the time come for a Basic Treaty that provides the EU with a proper constitution?

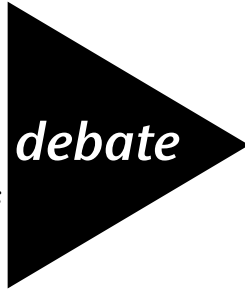
**CONTRIBUTORS INCLUDE:** Michel Barnier, Commissioner in charge of the IGC; Christopher Beazley MEP; Prof Clive Church and Dr David Phinnemore, UKC/QUB; Richard Corbett MEP; Prof Claus-Dieter Ehlermann and Prof Yves Mény, European University Institute Florence; Stanislaw Komorowski, Ambassador of Poland; Alain Lamassoure MEP; Jo Leinen MEP; Giorgio Napolitano MEP; John Pinder, Chairman of the Federal Trust; Frank Vibert, European Policy Forum.

£16.95 - 1 903403 03 0 - 188pp - OUT NOW

FEDERAL TRUST CONSTITUTION FOR EUROPE SERIES

*join the debate*

[www.fedtrust.co.uk](http://www.fedtrust.co.uk)



**THE FEDERAL TRUST**

seeks to enlighten the debate about good governance both at national and international level. As a charitable educational trust, we organise seminars, conferences and study panels, publishing the results of our investigations

and discussions. We like to think that the output of the Trust supplies the underpinnings for an informed debate on governance.

**THE FEDERAL TRUST** publishes stimulating European Essays like this every month and sends them to its Friends in an effort to inform and enlighten the growing debate on Europe.

---

Yes, I would like to become a Friend of the Federal Trust

Please, charge me:

£50

£25 (Concessionary rate for unwaged)

Name \_\_\_\_\_

Job Title \_\_\_\_\_

Company/Institution \_\_\_\_\_

Address \_\_\_\_\_

---

Telephone \_\_\_\_\_

Fax \_\_\_\_\_

PLEASE SEND TO:

**FEDERAL TRUST** Dean Bradley House, 52 Horseferry Road, London SW1P 2AF, UK / Tel 020 7799 2818 / Fax 020 7799 2820

I enclose a cheque (made payable to FEDERAL TRUST) or

Please debit my credit/debit card

Expiry .....

Signature .....

Date .....

## About The Federal Trust

The Federal Trust's aim is to enlighten public debate on federal issues of national, continental and global government. It does this in the light of its statutes which state that it shall promote 'studies in the principles of international relations, international justice and supranational government'.

The Trust conducts enquiries, promotes seminars and conferences and publishes reports, books and teaching materials.

The Trust is the UK member of the Trans-European Policy Studies Association (TEPSA), a grouping of fifteen think tanks from member states of the European Union.

The Federal Trust launched its series of European Essays in the autumn of 1999 with the aim of providing its wide circle of Friends with regular thought provoking information on a broad range of European issues.

Up-to-date information about the Federal Trust can be found on the internet at [www.fedtrust.co.uk](http://www.fedtrust.co.uk)

## Previous European Essays

- 'A Climate Community' by **Christopher Layton**  
£5 ISBN 1-903403-29-4
- 'Pan-European Political Parties' by **Thomas Jansen**  
£5 ISBN 1-903403-07-3
- 'Latvia's place in a New Europe' by **Dr Vaira Vike-Freiberga**  
£5 ISBN 1-903403-26-X
- 'Superpower - not Superstate?' by **Tony Blair**  
£5 ISBN 1-903403-25-1
- 'Do Czechs really want Democracy?' by **Martin Stransky**  
£5 ISBN 1-903403-24-3
- 'European Elections in Britain' by **Agnes Batory**  
£5 ISBN 1-903403-19-7
- 'Our Europe' by **Jacques Chirac**  
£5 ISBN 1-903403-17-0
- 'From Confederation to Federation' by **Joschka Fischer**  
£5 ISBN 0-901573-19-1
- 'One Currency - One Country?' by **Christopher Johnson**  
£5 ISBN 0-901573-17-5
- 'How to Pay for Europe?' by **Iain Begg**  
£5 ISBN 0-901573-09-4
- 'Is Civil Society heard in Brussels?' by **Adrian Taylor**  
£5 ISBN 0-901573-06-X
- 'European Ideas - Hungarian Realities' by **István Hegedűs**  
£5 ISBN 0-901573-93-0

© Federal Trust for Education and Research 2001  
ISSN 1468-9049  
ISBN 1-903403-30-8

Published by:

**The Federal Trust**, Dean Bradley House, 52 Horseferry Road, London SW1P 2AF.  
Tel 020 7799 2818 Fax 020 7799 2820 E-mail info@fedtrust.co.uk

The Federal Trust is a Registered Charity No. 272241  
Company Limited by Guarantee. Registered in London No.1269848

[www.fedtrust.co.uk](http://www.fedtrust.co.uk)