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Enlightening the Debate on Good Governance

**Convention on the
Future of Europe:
What is at stake for
national parliaments?**

GISELA STUART MP



European Essay No.23

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(New Fontana Dictionary of Modern Thought)

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Introduction

The Federal Trust makes no apology for publishing another *European Essay* on a subject related to the European Convention and the debate on the future of Europe. At this juncture there is no topic of greater importance not only for the political class in Europe but also for the wider public.

Gisela Stuart's article on the role of national parliaments is presented in a style and deals with a subject that ensures it a wide readership. It deals factually with the situation to date, describes the organisation of the Convention, raises some of the key issues or 'moot points' in debate there, and then homes in on the work of the committee that she chairs: the working group on the role of national parliaments. She carefully analyses the scrutiny role that parliaments play and lays out the issues surrounding the vexed question of subsidiarity. And she neatly contrasts the fora that appear to have power without having a face, and those that have a face recognised by their national publics but not the power that in her view they should.

This European Essay is full of practical suggestions: about how improvements could be made even without changing the Treaties, and the merits and demerits of different models for a new relationship between national parliaments and the European decision-making process. It tackles the thorny issue of how to relate national parliaments to the annual work programme of the Commission, and how to improve the chances of national debate on issues that might otherwise slip through the Brussels machinery too quickly. It outlines the possibilities for a 'virtual network' of national parliamentarians, for a more formal 'congress' (such as the President of the Convention, Valéry Giscard d'Estaing, has

suggested), and for a reformed structure for COSAC, the current arrangement whereby delegations of national MPs review issues twice a year at an international meeting.

If this European Essay is indicative of the progress already made in the working group on the role of national parliaments, and other groups are as advanced, then the Convention has already made great strides in outlining the problems and listing many of the potential answers. The working groups have as a timetable from now until the end of the year to finalise their discussions and reach conclusions. Then the Convention as a whole will debate the options before it. As the proverb has it, the devil always lies in the detail, and it is the detail that the working groups are asked to tease out. Reading this European Essay, you can see the pitfalls but also the possible solutions that may keep the working group on national parliaments on the straight and narrow path that will lead to practical reforms and ensure a more acceptable and more efficient European Union.

Martyn Bond
Director of The Federal Trust
October 2002



Convention on the Future of Europe: What is at stake for national parliaments?

Gisela Stuart MP

The story so far...

The European Union as an institutional construction has always prided itself in having 'evolved' and for 'historically having no equivalent'. It is neither a nation state nor a loose federation. Over a period of more than 50 years an increasing number of member states have come together and chosen to pool sovereignty when it was deemed to be in their collective best interest.

There never was an apparent pre-determined institutional roadmap; it simply seemed to have developed in a gradual and not always logically coherent manner. In the early stages the European Coal and Steel Community provided the framework, which laid down institutional principles. The institutional arrangements always followed a political aim. Increasingly the political aim became more important. Even when the words on paper indicated one direction, the politics behind the development remained consistent; a move towards political union. What started with six members now has fifteen, soon to be 25 or even 27 or 28. At each stage, its evolution has been the response to pressures, challenges and needs both internal and external. Impetus for change has come, at times, from within the EC/EU and its member states and at others from external pressures and

changes in the international political or economic climate. The European Union developed with its back to the Berlin Wall. What has changed in the last decades has been the end of the Cold War, German reunification and the disintegration of the Soviet Union. The very framework, which gave birth to the European Union, has fundamentally changed. Its success thus far has been its ability to address and adapt to changing contexts.

Europe's economic strength developed in the post war years. The success was largely based on the need to catch up with the United States in decades immediately following World War 2. This was achieved and the 1960s were probably the most successful years. This came to an abrupt end with the first major oil crisis in 1973 and European economies have never really recovered from this. The EU faces the challenge to deliver economically for its people, complete the internal market and make its economies competitive.

Despite its evident success there is clearly no room for complacency. As an ongoing process, the EU must continue to be responsive to what is happening within and around it and be flexible enough to maintain a clear *raison d'être*.

Member states have chalked up considerable experience in working together and a culture of interdependence and multilateralism has emerged. Not only this. The EU has gone beyond economic growth and stability to address issues of citizenship, rights and values. The European Social Model underpins many of our policy decisions and the EU has addressed the need to establish a counterweight to the initial preoccupation with trade and economics. As the role of the nation state in Europe continues to evolve, so does the concept of what sovereignty means. Retaining sole control of a policy area will not guarantee the ability to make sovereign decisions if their effectiveness is dependent on other states and the international climate. For many member states sovereignty today means having a seat at the table.

What we expect from nation states is also in a process of evolution, just as the expectations on the EU continually change. The challenge facing us is to make the EU relevant in today's terms. The role and function it should carry out depends in part on what we want and can realistically expect our state to do. There are areas where a clear consensus exists on the need for 'more Europe'. Here I am thinking of closer co-operation and co-ordination in such areas as external relations and defence [CFSP] and police and judicial cooperation. But just as evolving circumstances create the need for 'more Europe', they can also lead to a need for 'less Europe' in some areas that have already been subject to communitarised policy-making. There are some areas where further development should now take place on a national level, and as yet the EU has no mechanism that would allow competences to be returned to member states. We need a 'two way valve' which allows a review of the *acquis*. This will allow a continuation of 'communitarisation' where necessary, for example in completing the Single Market, but will also provide for a reverse mechanism in areas, such as the Common Agricultural Policy, where some believe there should be at least a partial renationalisation.

The Convention's role is to help clarify what the EU is for and to relate it both to the current challenges coming from the international sphere and to the demands being made on it by its citizens. The most immediate catalyst is the impending enlargement. This requires that we make the institutions, procedures and policies more accountable, effective and relevant for an enlarged Union.

So what is the Convention all about?

The Convention on the Future of Europe is composed of the current 15 member states and the 13 states that have applied to become members. They are represented each by one government representative and two parliamentary representatives. There are sixteen members of the

European Parliament and two Commissioners as well as a president and two vice-presidents. (In addition to which, each member has a named 'alternate' who can speak in the full member's absence and some groups have observer status).

The whole proceedings are guided by a Praesidium composed of the President, Vice Presidents, five parliamentary representatives, three government representatives, and two commissioners.

The Convention meets in full session roughly once a month, but working groups meet more frequently. All meetings are in public and there have been special sessions to engage with wider representative groups, in particular a full plenary session dedicated to involving Civil Society and a three day Youth Convention, which ran in parallel to one of the Convention sessions and reported back to the Convention plenary.

The model of the 'Convention' has been used successfully for the drafting of the Charter of Fundamental Rights. This current Convention has been asked – by the Heads of State at their meeting in Laeken – to come forward with proposals for reform by summer 2003, and in good time for the planned intergovernmental conference in 2004. It is the first time that parliamentarians, both national and European, are involved in the preparation of a new Treaty for the European Union.

The early phase of the Convention, which was described as the 'listening phase' came to an end in May. This allowed all members – almost half of which do not have first hand experience of being members of the EU - to express their vision of Europe. The pace picked up with the creation of working groups.

The first set of working groups is looking at the issues of legal personality, the Charter of Fundamental Rights, complementary competences, subsidiarity, economic governance and the role of national governments. A second wave of groups began in mid-September and they cover

freedom and security, external relations, defence and simplification of legal instruments. The working groups, all chaired by Praesidium members, take evidence from a range of experts and will come forward with recommendations and in some cases suggested treaty revisions or protocol amendments. All the working groups will have reported back to the Convention by the end of 2002.

What might be the outcome?

This will depend largely on the degree of consensus, which can be established up until June 2003.

At one end of the spectrum the Convention could agree on a new draft Constitution for the European Union. Such a constitutional text could simplify the current treaty provisions, create a single personality, merge the two basic treaties and would probably be rights based i.e. would incorporate the Charter of Fundamental Rights making them judicially enforceable in EU courts.

The minimalist outcome would be a simplification of the current arrangements, which would allow the decision making process to be more easily understood.

The Convention knows that unless heads of state largely accept their recommendation at the Intergovernmental Conference their efforts will have been in vain. For this reason it is important to engage them as much as possible in the process. A broad public acceptance of the process would also make it more difficult for the IGC to completely ignore Convention recommendations.

The UK members have been actively involved in promoting domestic debate in the UK. For example, David Heathcoat-Amery and myself have already given evidence to the Scottish Parliament and the Northern Ireland Assembly, and a visit to the National Assembly for Wales is also scheduled.

The British Parliament has been very responsive. Standing orders were changed for the duration of the Convention, which allows its representatives to give evidence to a Committee composed of members of both Houses. Several reports have already been published and all the relevant Committees in both Houses are actively involved both in taking evidence as well as making contributions to the debate itself. The decision taken some years ago to have a Parliamentary representative based in Brussels has proved to be extremely farsighted, and the British Convention members have drawn extensively on the support of both Houses.

Moot Points

Where will the power lie in an enlarged, reformed European Union? There is a false debate that continually resurges, pitching intergovernmental against supranational (or communitarian). At its most basic, the former implies strengthening the Council of Ministers at the expense of the Commission and the latter, strengthening the Commission at the expense of the Council.

The truth as always, lies somewhere in between, and dichotomising the debate will not help us to find a realistic solution for the future.

The EU is a mixture of intergovernmental and communitarian elements and will remain so. The complexity of the arrangement comes from the nature of the process and its uniqueness. It is precisely the combination of the two that has enabled it to function and to achieve what it has to date.

We need to review and consolidate what we have, to succeed with our reforms, succeed in enlarging the Union and in linking our national systems more closely to the European level. There is a perceived crisis of legitimacy and citizens evidently feel disillusioned with and disconnected from the

institutions. There is a lack of trust, and we have to acknowledge this. To strengthen the communitarian side of the equation without an accompanying consolidation of the intergovernmental would be a fundamental mistake. As well as a strengthened Commission, the EU needs an elected Council President whose job it would be to ensure continuity and a longer strategic vision. The current six-month rotating system will be untenable following enlargement. The rotation itself could take on a different form, thereby preserving the right of each member state to have a period where they take a leading role. However, this must come under the aegis of a longer-term strategic leadership, which would create a much more conducive framework for establishing an effective and credible actor in external affairs, for example, which is one of the areas seen to be most in need of a more consolidated 'European' voice.

The Union will be strengthened if all its component parts are confident in the role they play. This is not a 'zero sum' game.

A balanced approach would also address some of the issues at stake with enlargement. For the new members we have to give a clear signal of how relevant the nation state remains within the EU. Sovereignty has a different meaning in a European context of community and intergovernmental policy-making. As newly independent states, their caution vis-à-vis an immediate and considerable deepening of the EU is understandable. At the same time as most of them classify as 'small states' they are more likely to tend towards a stronger Commission. A balanced approach that gives a clearer, more defined and more strategic role to both institutions would seem to address both of these concerns.

There are proposals on the table for a much wider reform of the Council, taken forward at Seville, which would not require Treaty changes. I will not go into the substance of the issues in this paper, but the decision to open up to public scrutiny some parts of the work of the Council of Ministers is a significant step towards greater accountability. Similarly a

decision to streamline the work of the Commission and reduce the number of Commissioners is clearly a move in the right direction.

The perceived crisis of legitimacy is also linked to a sense of 'disconnect' between decisions emanating from 'Brussels' and the politicians and civil servants responsible for taking them. Secrecy within the Council is one of the reasons why the EU constantly receives a bad press, blamed in the national press for decisions its ministers in Council have most likely accepted, possibly as part of a larger package deal. This requires not only an opening up of the Council when it acts as a legislator, but also effective scrutiny by national parliaments of their ministers in Brussels. Taking responsibility for decisions made will help clarify much of what our citizens find elusive and confusing.

Working Group on the Role of National Parliaments

Many of these themes are reflected in the discussions taking place in the working group examining the role of national parliaments, which I am chairing. The remit to consider the role of national parliaments in the European architecture was given to us by the heads of state and government at Laeken and the substance of our debates will be presented in late October to the Convention Plenary for further discussion and development.

Scrutiny

What should national parliaments do? First and foremost they should hold their own executive to account. This is carried out by scrutiny of the action of their ministers at European level. Within the group there is a consensus that, although it is clearly not the place of the Convention to state how this scrutiny should be undertaken, it is our job to ensure that structures and procedures are in place to make this as easy and effective as possible.

The models that already exist for scrutiny in the various member states are vastly different. For example, the Scandinavian/Nordic models have rigorous *ex ante* procedures, coming into play before legislation is discussed in the Council of Ministers. Under these systems, parliaments provide their ministers with a clear mandate before they go into Council and, in some cases, are empowered with the ability to move to a vote of no confidence in the event that the minister cannot give a satisfactory justification for a deviation from the mandate. These models clearly function well for the Danes, Swedes and Finns. However, they would be unlikely to satisfy the French, or fit in with the UK's own political culture and traditional interaction between executive and legislature. My own personal concern regarding the Scandinavian/Nordic model would be that by tying ministers' hands they would no longer be regarded by their counterparts as real players in Council, given how difficult it would be to deviate from their mandate for the sake of negotiation.

National systems differ and we do not wish to be prescriptive, but this does not mean that they cannot be improved. The brief exercise in sharing best practice within the working group was a clear indication that we have a lot to learn from one another. These discussions were welcomed by the representatives of those countries about to join the EU. We can help give a clear signal to the new members that strong effective national parliaments, actively addressing European issues, strengthen the EU as a whole and provide for a more democratic system overall.

For scrutiny to work we need to change the sequence and timing of the flow of information, both between the Commission and national parliaments and between national parliaments and their governments. For example, there is a desire to see the Commission proposals sent directly to national parliaments at the same time as they are sent to the governments. Another proposal is to allow parliaments an extra period of four weeks to deliberate proposals from the Commission, in addition

to the six weeks stipulated in the Protocol on the role of National Parliaments in the EU (Treaty of Amsterdam). This would enable the legislatures to work on the text and feed their position into the government before the first working group of the Council meets to discuss it (which often takes place in the first 15 days after the proposal is received). A final example is the right for national parliaments to have access to documents on the positions taken by each of the sides involved in conciliation. We should aim for an exchange of best practice and the provision of structures and procedures that allow each parliament to carry out its own form of scrutiny as effectively as possible.

One of our Finnish colleagues described effective parliamentary scrutiny as 'compensatory sovereignty'. I would be more ambitious. As democratically elected representatives we should have clear political input into the decision-making process and not simply act as a very effective burglar alarm.

Subsidiarity

The second substantial set of discussions has focused on creating a role for national parliaments in monitoring the application of the subsidiarity principle. Here our work overlaps with another working group and the two groups held a joint session.

There are various stages at which it is justified for national parliaments to have a role. The first concerns the Commission's annual work programme, currently debated by the European Parliament and the Council, but not by national legislatures. On the one hand there is a case for involving national parliaments already prior to this, at the stage earlier in the year when there is an inter-institutional dialogue on the policy strategy of the Commission. It is on the basis of this that the work programme is later drawn up. Perhaps this earlier dialogue also presents a useful juncture for the involvement of national parliaments.

It would be of considerable significance if Commissioners undertook to come out to national parliaments each year to present their annual work programme for debate in the national plenary sessions. In the UK parliament discusses the government's legislative proposals for the year ahead for several days. Using a 'Queen's speech' approach with the Commission would help close the loop between the Commission and national legislatures, put a face to the Commission, challenge fixed attitudes and mindsets and provide an excellent opportunity for the House to hold a substantial debate on Europe. Encouraging national plenary debates on European policy is the core of a proposal made by one of the Irish representatives. He suggests nominating a week Europe-wide when specific issues relating to Europe are discussed at the same time in all parliaments. This would contribute to creating a European 'public space' with all our national medias focusing on the same issues in the same week.

The second stage at which national parliaments can become involved is at the point when the Commission drafts legislative proposals, which are then sent to the Council and the European Parliament. To influence the process here, parliaments could either act independently, by drawing their government's attention to possible subsidiarity breaches, to be taken into consideration in Council deliberations, or collectively to voice joint, and thereby strengthened, concern.

Where subsidiarity is an issue, the other institutions already have their own mechanisms and procedures for ringing alarm bells, if they believe it to be necessary. This is why national parliaments need to be given the explicit right to express their view in this area.

There are various proposals circulating on how this can be achieved in practice. There is the idea of creating a 'traffic light' mechanism for national parliaments to use with regard to a possible breach of subsidiarity. This would be a watchdog mechanism by which they could feasibly call a

halt to a piece of legislation. The exact sanctions that could be used and to which body they might have recourse, were such an occasion to arise, have still to be clarified. I favour a political process, with recourse to the Courts being reserved only to cases where legislation has already been passed. At its most basic level, if a significant number of parliaments feel that a specific proposal breaches subsidiarity, it should be returned to the Commission for redrafting. If this is still not acceptable this should be a clear indicator that more fundamental rethinking is necessary.

How should parliamentarians organise themselves to carry out this function? Several ideas have been put forward. Firstly, a 'virtual network' of national parliamentarians (the Chairs of European Affairs Committees, for example), where an electronic exchange of views could be used to build collective positions on breaches of subsidiarity. This avoids the creation of a new body, thereby meeting the requests of many of the Convention members.

The second is the idea of a 'Congress' of parliamentarians. Here some suggest a mixed body of national and European parliamentarians, although I take the view that, where subsidiarity is concerned, it should involve only national parliaments. This view has been endorsed by the group that is looking specifically at the principle of subsidiarity. This Congress, proposed by some of the French representatives, would give national parliamentarians, collectively, the opportunity to come to a decision on subsidiarity and to refer an issue to the European Court of Justice.

The third proposal is very similar and involves a reform of the already existing COSAC, which currently includes MEPs, to create a forum for national parliamentarians to monitor the principle of subsidiarity. A COSAC, substantially reformed and reconstituted, would provide a forum where national parliaments could exchange experience and build up expertise and technical competence on issues such as the choice of legal

instruments and national transposition. This would enable them to come to a joint view, if desired and helpful, on whether a particular measure should be handled differently. It would also raise the profile of the European Affairs Committees, again contributing to making European policy understood as 'domestic' policy rather than foreign affairs.

I see considerable benefits in the third of these, although there is no reason why this could not be combined with the first, to create a more 'virtual' reconstituted COSAC, with a small secretariat to ensure information flow and coordination.

An increased role: power and face

An increased role for national parliaments is not a lurch towards a more intergovernmental Europe. On the contrary, strong national parliaments are a means to strengthen the EU. Similarly I do not wish to make National Parliaments co-legislators, the way European Parliamentarians are. National Parliaments and the European Parliament have distinct functions, which do not compete with each other, but complement each other. Giving a clear role to their national parliaments, not to block, but to provide an early warning system for those proposals they do see as problematic will create logical linkages for the citizens in an otherwise rather elusive system, and prevent national parliaments from claiming after the event that they knew nothing about it. As one of the Italian representatives noted, at the moment the European Parliament is the power without a face, and national parliaments are the face without a power. Both of these shortcomings need to be addressed. This is all about creating lines of clear responsibility and the channels through which we can make a real input.

There has to be clarity on who does what and who is responsible for what and so a certain division of labour is required. If we do reconstitute COSAC, there is still a role for a forum that brings together national and

European parliamentarians. We should maintain a mechanism for regular dialogue to deal both with those instances where there is an overlap and those where a stronger, joint 'parliamentarians' voice may be required. One notable proposal for such a body has come from President Giscard d'Estaing himself. His 'Congress of the Peoples of Europe' made up of MEPs and national parliamentarians, could be consulted on future enlargements, for example, or could advise on nominations to certain EU posts. There are also areas of policy on external relations, currently outside the EP's remit, which would benefit from the involvement of such a forum. Without wishing to institutionalise the model of the Convention, a 'Congress', called together as and when the need arises allows for broad consensus building.

Where do we go from here?

A strong European Union requires all its major components – the Commission, the Council, the European Parliament, and National Parliaments – to be strong and confident institutions. They need to be clear as to their role and mandate and be determined to fulfil that mandate. All of them 'could do better' and in the long-term interest of the Union, all of them will have to do better.

I do not want national parliaments to compete with the European Parliament and try to become co-legislators. I do not want them to take parliamentary scrutiny to such an extent that they make their ministers 'lame ducks' in the Council. I do not want them to delay and complicate the process of decision making even further. The fundamental problem is that too often a decision taken at an European level takes such a long time to come into effect that by the time it impacts on the every day live of our citizens those who have taken the decision are no longer there or cannot be identified. Ultimately, democracy to me means being able to remove from office those people

who have taken decisions citizens disapprove of. This is not possible in the current structure.

I want national parliamentarians to have the ability to shape decision-making. This means early awareness of proposals and programmes, a say in whether a particular action is taken at national or European level, and an ability to really know what has been done on their behalf by their government ministers at European level. I want national parliamentarians and European parliamentarians to see themselves as parliamentarians who work together albeit on different levels. Success for me will be seen on the day national parliamentarians no longer say 'they' decided to do this, but can with confidence say 'we' did this.

Gisela Stuart MP is one of two UK MPs who are members of the European Convention.



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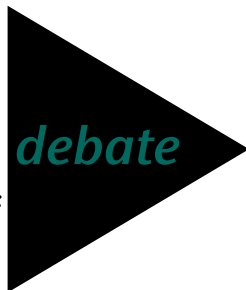
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