

A New Constitution for the Old Continent?

Jean Monnet would be pleased. Charles de Gaulle would be appalled. Tony Blair must feel as if he is being slapped with a Cotswold cow carcass.

On the heels of their squabbling at the European summit in Nice last December, some Europeans are plunging toward writing a real constitution for the European Union (EU)—and possibly even creating a “federation.” Various Germans, Belgians, and Italians would like to commission a constitutional convention to write a draft by the time the Italian presidency begins in 2003, to be ready for fine tuning and signing at the next scheduled EU treaty summit in 2004.

One short year ago, it seemed that German foreign minister Joschka Fischer was an exotic maverick when he resurrected—“personally,” not officially, as he stressed—the question of the EU’s *finalité*, or end goals. Observers considered Fischer’s bolt-from-the-blue appeal at Berlin’s Humboldt University for a federal Europe to be an anachronism—a throwback to the days of founding fathers Monnet and Robert Schuman or to the demonstrations in the 1950s by idealistic young Germans for a united Europe to exorcise the continent’s centuries of wars. French foreign minister Hubert Védrine complimented Fischer (for, among other things, having consulted Védrine before giving his speech), then deflated any federal fancies and praised instead the dominance in today’s EU of intergovernmental action by nation-states over the supranational European Commission. In a noteworthy performance for a neo-Gaullist, French president Jacques Chirac also lauded Europe effusively in the German Bundestag, but he skirted the idea of a federation and focused instead on Fischer’s parallel vision of faster integration among an elite *avant-garde* of existing EU members, while laggard

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EU members remained behind. British prime minister Blair called for a European “superpower but not a superstate.” German chancellor Gerhard Schröder remained conspicuously silent.

To observers steeped in the EU’s unique “Monnet method” of rolling consensus, Fischer’s summons threatened the familiar system under which Spanish fish quotas are casually traded for Swedish allowances for Arctic farms, or huge subsidies for French peasants are prolonged in return for instituting German anti-inflation canons at the European Central Bank. As long as the *finalité* of the EU was left unaddressed and vague—and as long as Berlin was willing to bankroll the myriad deals—such horse trading could continue to function. The various European leaders could still stick together while dreaming their different dreams. Yet, once Fischer described his own federal dream and forced others to do the same, France and Germany would clash, however politely. Furthermore, Blair, who already was hard pressed to bring Great Britain into the European Monetary Union (EMU), would have to fend off the redoubled wrath of British Euroskeptics over the dreaded “f-word.”

Nice Try

By the time of the Nice summit in December 2000, the incremental pragmatists seemed to have succeeded in sidelining Fischer’s grand debate. The adoption of the EU Charter of Fundamental Rights included one rhetorical flourish, but this provision remained nonbinding. Otherwise, the 15 members ignored overarching visions and returned to their usual microscopic haggling about whether Poland, after accession, would get 26 votes or 27 votes in the Council of Ministers; how many topics would escape the veto and be decided by “qualified majority” voting rather than unanimity; and just how high that triple-qualified majority would have to be. Settling even those rudimentary decisions proved to be so acrimonious that the European Council spilled over not only its customary 6 A.M. close after the last scheduled meeting day, but into the wee hours of the second day after the expected conclusion.

London may have been pleased with the minimal outcome at Nice, especially because Great Britain managed to preserve its veto on EU tax harmonization, at least temporarily. Madrid may have been happy that its threat to veto admission of new Central European members into the club—should enlargement subtract one penny from Spain’s generous EU subsidies—seemed to be paying off. Chirac was elated that he succeeded in blocking the 83 million Germans from getting more Council votes in the Nice reallocation than the 59 million Frenchmen.

Everyone else was sour, however. The small states (and European Commission president Romano Prodi) were offended by the arrogance of the French presidency toward them and by Chirac's blatant promotion of French national interests over the EU presidency's prescribed role as neutral facilitator. Italy was upset, as usual, because it was not treated as a major power, despite its size as one of the five largest EU states and its history as one of the six founders of the European Community (EC). German elites were distressed that the Nice treaty failed to solve so many institutional "leftovers" from the 1997 Amsterdam treaty that had to be solved to add new Central European members without causing the EU to seize up. France and Germany, the erstwhile double motor of the EU, quarreled openly. The European Parliament, *sotto voce*, threatened to reject the Nice treaty because its own powers remained marginal in the document.

In the hangover, frustration prevailed. The Germans expressed a common view in concluding that Nice proved that the intergovernmental method had reached its limits. An informal consensus process designed for a club of six could be stretched—barely—to work with 15. It could not possibly work for two- or three-dozen members as diverse as Ireland and Malta—as vivid, lingering memories of Malta's obstructionism at the 1975 Helsinki Conference on Security and Cooperation in Europe suggested.

The urgency was palpable. Twelve neophyte democracies were scheduled to join the EU, with the first admissions looming in 2004; the EU therefore had to adopt mechanisms that at some point could force the interminable talking shop to stop talking and act. Europeans from Tenerife to Lapin Lääni were going to get euro coins and notes in their pockets by January 2002; the 12 EMU finance ministers therefore had to sort out who had what authority with the remaining three EU finance ministers—including the British chancellor, who oversaw the key London financial market. The EU's ambitious rapid reaction force was scheduled to acquire an "initial operating capability" by the end of 2001; its political masters therefore had to formulate some procedure for deployment decisions. Polls showed that public opinion about the utility of EU membership was getting more and more negative even as support for vague European integration remained high; the infamous democratic deficit therefore had to be remedied.

German Maneuvering

Under the pressure of this urgent need for action, the Germans began to probe how they might turn their own domestic necessity into a virtue. They too stood accused of national egoism—of having placed narrow internal politics above the broader European weal at Nice. Because the German

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Länder (states) had resolved to claw back *Länder* rights that, over the years, had transferred to the federal German government and even to the EC/EU, Berlin insisted that yet another treaty conference be called for 2004 to follow in the weary footsteps of Maastricht, Amsterdam, and Nice. The 2004 treaty summit was supposed to correct this federalizing trend by writing into stone a “catalogue of competences” for the EU and its nation-states that would prevent the federal government in Berlin from relinquishing *Länder*

rights to Brussels—or, if this transfer already had transpired, mandate their reclamation. Few other governments wanted to subject themselves to another treaty summit so soon, but if Berlin had not pressed this demand, it might well have faced a revolt in the Bundesrat (upper house) over ratification of the Nice treaty.

To escape the malaise after Nice, the Germans chose a “flight forward” and leaped well beyond the general opinion of other European elites. In a speech to the European Parliament in April 2001, German president Johannes Rau revisited Fischer’s federal appeal and called for “a new European constitution” for a “federation of nation-states.” (Former European Commission president Jacques Delors had originally coined this opaque formulation, which makes about as much sense as “hot snow,” in the rather different context of an avant-garde federation of the six founding members of the EC.) The Council of Ministers, Rau added, should become an upper house to complement the European Parliament. Italian president Carlo Chiampi and, in more restrained mode, the Belgian officials promptly seconded Rau.

Then in May 2001, to the astonishment of almost everyone, Schröder—who had prided himself on having avoided the topic of Europe altogether in his 1998 election campaign and subsequently had volunteered little about the EU—suddenly stepped forward as the newest champion of a federal Europe. His chosen instrument was a resolution drafted under his chairmanship for the Social Democratic Party (SPD) convention in fall 2001 and personally promoted by him at the Berlin spring conference of European Socialists. “German Social Democracy will take on itself the role of being a party of European unification,” Schröder proclaimed.

The SPD resolution called for the European Commission to become a “strong European executive” and for the European Parliament to be granted full budget authority. The Council of Ministers should indeed become the upper parliamentary chamber to guard the prerogatives of member states against encroachment by EU bureaucrats, the draft continued, in the same

way that the German Bundesrat guards the prerogatives of the German *Länder* against encroachment by Berlin. Under the “subsidiarity principle” of assigning powers to the lowest appropriate level of governance, competences that nations could exercise better than the EU should be returned from Brussels to the member states. In particular, the agricultural and regional infrastructure subsidies that account for 80 percent of the EU budget should be partly shifted down one level by joint national-EU “cofinancing.” Furthermore, Europol should be turned into an operative Europe-wide police force, a common border police should patrol the EU’s exterior perimeter, and the Nice Charter of Fundamental Rights should be incorporated into the EU treaties and made legally binding. Such an evolution, Schröder argued, would help to redress the democratic deficit of murky EU institutions by making them more transparent and accountable.

German *Feuilletons* appeared, comparing the present primitive state of EU cooperation with American colonial disarray before the constitutional convention of 1787. Various commentators became fascinated by the chaos in the eighteenth-century U.S. confederation before the constitutional convention, by the audacity with which those convention delegates exceeded their instructions, and by the passionate and deep philosophical debate in the *Federalist Papers*.

By now, even enthusiastic Germans no longer wished to create a United States of Europe with a strong government based on the U.S. model; domestic realities forced German chancellor Helmut Kohl to drop this goal as unrealistic in the early 1990s. The Germans did want, however, to bring order and clarity to the hodgepodge of supranational EU governance that had evolved since the end of the Cold War. A constitution for an EU that was far less than a federation but already far more than a loose confederation might just do the trick.

Suddenly, the magic word “convention” was in the air. A drafting committee comprised not only of bureaucrats and experts but also of governmental, national legislative, and European Parliament representatives had been successful in 1999–2000 in writing the Charter of Fundamental Rights. Why could that process not be repeated to compose a full-blown, single constitution? Indeed, why could that charter not become a bill of rights for a new EU constitution? Agreeing with the European Court of Justice that the scattered elements of supranational governance in successive EC/EU treaties constitute the equivalent of a constitution was all well and good. A

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single spare summation of those treaty elements, however, might prove far more attractive to the public than the impenetrable prose of the Maastricht, Amsterdam, and Nice treaties and the 80,000 accumulated pages of EU rules and regulations—the sacrosanct *acquis communautaire* that every EU member must endorse.

European Fears of Centralization

This time around, the potent German brew could not simply be damned with faint praise, as Fischer's Humboldt speech had been. Certainly, various Italians and European Parliamentarians welcomed the SPD paper and its attempt to overcome the EU's democratic deficit—but few others did. Austrian chancellor Wolfgang Schüssel and a spokesman for the ruling Danish Social Democrats warned against setting up a "superstate." Blair let it be known that he would not support any moves toward a European government and—pleading the exigencies of his reelection campaign—prudently stayed away from the European Socialist sounding board for Schröder's notions. One Tory backbencher sputtered that the German proposal recalled Hitler's vision of Europe. The British media once again condemned "centralization" and reminded readers that English democracy had worked splendidly for 800 years without the straitjacket of a written constitution.

In Latin Europe, a spokesman for the Spanish government told *El Pais* that Madrid was "unpleasantly surprised" by the German initiative—especially the attempt to reduce the EU's financial responsibility for regional development by pushing those costs in part back onto national governments. Indeed, the Spanish went on the offensive, objecting to and reopening the entire EU package negotiated in 1999. In that deal, regional funds were automatically reserved for regions within member states that fell below 75 percent of the average EU wealth. Under this formula, the combination of Spain's rising prosperity after 20 years of EU subsidies and the accession of a dozen poor Central European countries would disqualify all but the poorest Spanish regions and require Madrid to share with the Central Europeans the EU largesse it has enjoyed for so long. Numerous other EU members regarded the Spanish threat of a veto on new members as blackmail.

More suavely, Chirac and French prime minister Lionel Jospin immediately rejected any devolution of farm subsidies from Brussels to Paris—the prime beneficiary of the EU's German-bankrolled Common Agricultural Policy. They further told Schröder at their next bilateral summit that the German chancellor's ideas for institutional reform were not acceptable "in this form" and again praised the intergovernmental process. French finance minister Laurent Fabius ruled out any downgrading of the intergovernmen-

tal European Council to no more than an upper parliamentary chamber (as did Prodi, for that matter, along with Schröder's own foreign minister, who quickly adopted the omnibus phrase "federation of nation-states" to join the French rhetorically). French European minister Pierre Moscovici counseled retaining the current balance between the Council, Commission, and Parliament and observed dryly that national governments were the proper "expression of the will of the people."

Some German reporters in Paris noted further that the French government cedes its own National Assembly so little control over the French budget that it would hardly tolerate ceding more power over the EU budget to the European Parliament. Others heard their French interlocutors spurn enhanced European Parliament powers because of Germany's "disproportionate weight" in that body—that is, the additional European Parliament seats that French president Francois Mitterrand had grudgingly accorded Kohl after unification boosted the Federal Republic's population by 17 million. The clear French preference was to perpetuate the intergovernmental method of peripatetic European Council summits and Council of Ministers meetings in which those equal voting weights for France and Germany that Chirac had won at Nice would apply. In addition, although Paris did not necessarily oppose a coherent EU constitution, it wanted a more steerable commission of experts, not some unpredictable convention, to write any draft.

Adding to the negative reactions to the constitutional idea, pragmatists of various nations shrank from the unraveling of the tortuous multilateral package deals of the past decade that would inevitably follow from the German-proposed isolation and the repackaging of the segments of those deals that addressed "constitutional" questions.

Clues from the Past

On the face of it, then, Schröder's initiative appears to be doomed. One could dismiss it as merely a domestic political ploy—an attempt to steal the pro-Europe clothes of the Christian Democrats as neatly as his Social Democrats stole the conservatives' clothes of liberal economic reform. Indeed, chancellery staff downplays the specifics of the SPD proposal and highlight instead Schröder's political preemption in neutralizing an issue that might otherwise favor the Christian Democrats in the 2002 national election.

Yet once ideas are released, they do not always return to their bottles. What today might seem to be only abstract brainstorming is already developing surprising momentum. The impressive German track record in post-Cold War Europe—in agenda-setting, dealmaking, and quotidian bureaucratic car-

penry—would caution against any easy dismissal of the ferment in Berlin. What Germany wanted in the 1990s, Germany generally got.

A review of that decade is instructive. Most conspicuously, Germany achieved swift unification—against the initial desires of Great Britain and France but in close coordination with the United States. Less conspicuously, from 1990 onward, German planners saw the fall of the Berlin Wall and the subsequent disintegration of the Soviet Union as the abrupt opening of one

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of history's rare fluid periods. The old continental regime had collapsed. It no longer restricted choices and locked leaders into predestination. Yet that exceptional fluidity would be brief. The challenge would be to move quickly to shape the new Europe in the years before history again ossified—but not so fast as to generate a negative political reaction that could bring the whole EC edifice crashing down.

As the Cold War ended, Mitterrand and British prime minister Margaret Thatcher might flirt with reversion to a more “normal” nineteenth-century balance-of-power rivalry, but the Germans regarded this possibility as a nightmare. They wasted no time on the popular question of whether Europe's unwonted half-century of cooperation in the EC was simply an ahistorical anomaly forged under the extraordinary Soviet threat. They took for granted that European cooperation—including the already agreed goal of instituting a real single market by 1992—was both sustainable and worth sustaining. Kohl's axiom that German unification must lead to European integration was no mere slogan; it was a political imperative.

To this end, German strategy quickly identified two tasks as essential: “widening” the EC to bring the new Central European democracies into the club and “deepening” West European integration, especially by the unprecedented union of a dozen strong, independent currencies. (At the time, many observers regarded the EMU as a French demand and a German concession to buy unification, but this view misread as resistance to the whole EMU project what really was German insistence on the conditions of a fully independent European Central Bank with the sole mission of fighting inflation.)

For several years, the Germans alone regarded widening and deepening as not only compatible but even complementary. The crises to be expected from doubling the number of EC members would compel greater EC political integration to overcome these crises, they contended. By contrast,

Germany's strongest ally in promoting enlargement—Tory Great Britain—advocated this policy in part because it thought the resulting EC heterogeneity would preclude tighter political integration. Obversely, France strongly supported deepening in part because it thought this would shut out the neophyte Central Europeans, who otherwise might turn out to be German clients.

In retrospect, the German double agenda of widening and deepening obviously won the day. Germany set the course for Europe before history's window of opportunity again closed. Thus, the record suggests that the Germans' current floating of constitutional and federal proposals should be taken seriously. They may just have sufficiently shaken up the old method of thinking to form new patterns of shifting coalitions in the EU kaleidoscope.

Beyond the Rhetoric

The Benelux states that are disadvantaged in any purely intergovernmental system have always regarded the supranational European Commission as their protector against a *de facto* "directorate" of the powerful big states. They think the pendulum has swung too far toward intergovernmental European Council summits in the past decade. They would welcome the German-advocated strengthening of the Commission.

The Italians also may be on the verge of deciding that they are unlikely to become one of the major players again soon and should therefore promote supranational protection of the smaller players. Newly elected Prime Minister Silvio Berlusconi's first instinct was to back the Spanish strategy to delay EU enlargement until Italy's Mezzogiorno (Italy's poor southern region) was assured of its entitlements in perpetuity. Yet Italian diplomats suggest that, even though Berlusconi was no special friend of Europe in his earlier term as prime minister, he might well want to establish his credentials as a serious statesman this time around and proclaim an EU constitution during the Italian EU presidency. They add that Italy (like belated Great Britain) itself is moving toward more regional decentralization—the kind of federalism in the historic German sense that in fact is the equivalent of Great Britain's pet "subsidiarity."

The Spanish, for their part, seem to have been wielding their veto threat not out of fundamental opposition to enlargement but as a tough negotiating tactic to exact maximum EU financial assistance for Spain from the German paymaster. (The Spanish opposition Socialists already have begun to demur from the conservative government's hard-line, out of fear that Spain ultimately would have to pay the unacceptable political cost of isolation in the continuous trade-off of favors in the EU consensus process.)

Even Great Britain, as a large net payer into the EU budget, would welcome reduction of the extravagant farm subsidies and further approve the drive of the German *Länder* to delimit and reduce EU competences. Great Britain may fear that any constitutional convention might be tempted to exceed its writ and go beyond the minimalist draft suggested by the *Economist* a year ago. It could gamble, however, that the articulate Scandinavians would help avoid such escalation. In the end, the pragmatic British generally tend to jump onto the caboose as the train finally pulls out, to avoid being left behind and to gain some influence over the outfitting and speed of the train. Put another way, even London is not immune to the dynamic in which members think they are making a provisional and reversible commitment to EC/EU evolution, only to discover that they have entered such a network of benefits and obligations that they can no longer “exit” with impunity. Typically, they then resort to reengaging and demanding more “voice” for themselves in shaping the structure of the network.

As for the Central European members-in-waiting, they are socializing quickly to the EU’s system of nonstop negotiation. Most of the candidates are small and share the small, western European states’ yearning to protect a strong, supranational European Commission. Large Poland, having been treated more solicitously by Berlin than by Paris, often sympathizes instinctively with the German position on fundamental questions.

Revisiting the Franco-German Relationship

France remains a question mark. Clearly, the frenetic kiss-and-make-up efforts since Nice cannot restore the old intimacy to the French-German relationship. Yet Paris could still preserve something of the privileged “alliance within the alliance” that has developed over the past half-century if it would accept even moderate reductions in French agricultural entitlements, for example, or boost its minimal contributions to the EU budget to ease the German burden of funding close to 60 percent of the EU’s net outlays.

To date, the French political class has been disinclined to surrender its old conceit that France could forever be the political rider on the subservient German economic horse. It strongly resists current German pleas to weaken Gaullist intergovernmentalism and strengthen supranationalism.

Recently, however, Berlin has been signaling Paris that its decades of conspicuous deference are over and that it now has other options. At Nice the Germans first sought agreement with France but, failing that, resorted to their fallback tactic of forming shifting coalitions with the smaller EU states that sought out German protection against French pressures at the summit. More seriously, young German Social Democrats in particular are beginning

to rebel against Berlin pouring billions of euros into the EU's coffers every year. The part of the SPD resolution on Europe that interests them is not some abstract federalism but the concrete possibility of reducing the EU's staggering dole of agricultural subsidies.

Thus far, the ruling German elites have shrunk from fundamentally questioning the EU's financial equity precisely because they fear populists could fan the issue and it could flare up into a taxpayers' revolt. Backbenchers and younger Social Democrats who take Europe's present peace and prosperity for granted, however, feel no such compunction. Assessing the German mood, some mainstream EU activists already fear that the Spanish and French refusal to share German handouts with the needier Central Europeans could set off a backlash among young Germans against Berlin's heavy funding of the EU. Under these circumstances, they worry, Schröder's proposals, instead of leading to a closer European federation, could in practice lead to sharp cuts in present German contributions to the EU and to a "hollowing out" of the commitment to EC solidarity.

If the French recognize this danger in German politics—a big *if*—realism might well nudge them to exhibit greater flexibility, especially after the French presidential election in 2002. Indeed, there already are a few hints of potential change in Parisian attitudes on the issues Schröder has raised. On his Web site, Chirac supports creation of a constitution for a "federation of nation-states" (with emphasis on the nation-states, of course). Jospin tried to bridge the French-German gap when he finally gave his long-delayed programmatic statement on Europe last May. "Europe" is no longer the divisive issue in France that it was ten years ago, when the far right was united and a referendum result came within a whisker of rejecting the Maastricht Treaty. At some point, France—which by now has a sophisticated industrial sector to offset its boisterous rural lobby—might even end Chirac's stonewalling and negotiate tolerable reductions in EU farm subsidies.

Prodi, for one, is apparently anticipating such movement and is positioning himself to be a broker between the French and the Germans. Predictably, he has laid down some markers to defend the "Community method" against intergovernmental encroachment and wants a stronger role for the Commission in EU foreign policy, the EMU, and justice and home affairs. Beyond such claims to institutional turf, however, he is pointedly praising selected suggestions by Schröder and Jospin (as well as the Belgians) and

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calling for a consensus compilation of the best proposals in the process leading up to the next treaty summit in 2004.¹ Already the Belgians, who hold the current six-month EU presidency, have named a council of “wise men” to begin the process and have proposed a convention to write alternative scenarios for the future construction of the EU.

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For their part, the Germans are making the most of the EU’s hallowed creative ambiguity in their setting of the constitutional and federal agenda. However heretical the German breach of the taboo against clarifying the EU *finalité* might seem, and however radical various German proposals for a European “constitution” and “federation” might sound, none of the German principals has yet defined these key terms. Indeed, their staffs stress that the German utterances are not finished proposals but invitations to an

open European debate. Because the EU already has a constitution in its successive treaties, according to the European Court of Justice, the opportunity for convergence among today’s clashing views is evident. Existing treaty provisions might yet be pulled together in one document to form a constitution for the nongovernment of the nonstate of Europe. Stranger things have happened in the history of the EU.

Note

1. The English-language texts of key statements by officials on the EU’s constitutional future, as well as the draft SPD resolution, may be found in the documentation section of the winter 2000/01, summer 2001, and fall 2001 issues of *Transatlantic Internationale Politik*.