Europe's rude awakening from a federalist dream

The EU after its Constitution's defeat in France and the Netherlands

BY *PHILIP STEPHENS*

The rejection of the European Union's new constitutional treaty by the voters of France and the Netherlands has cast a cloud over Europe. There has been a profound shift in the geopolitical realities of the continent — a rude awakening from a federalist dream born half a century ago in the Sicilian town of Messina, where the European Union got its start. The roots of the rejection lie in the new face of the European Union, with 25 — soon to be 27 — member states whose electorates no longer automatically agree with the leaders in Paris and Berlin.

Ratification of the treaty has been suspended; few believe that it can be revived despite its endorsement by Germany and several other European Union states. The absence of strong political leadership in France and Germany and justified doubts over Britain's commitment to the process of integration have deepened the political uncertainties about the future direction of the Union.

Yet the treaty that French and Dutch voters rejected was by no means a blueprint for a federal European state. Former French president Valery Giscard D'Estaing, who chaired the convention that drew up the document, liked to compare its proceedings with those held in drafting the American Constitution in Philadelphia, Pennsylvania, in 1787. But the very title of the European document, "A Treaty establishing a Constitution for Europe", speaks to the ambiguity of its ambitions. Though some would certainly like to have seen it become another pillar in the construction of a United States of Europe, it was much more an agreement between sovereign states. It was designed to consolidate existing treaties and to streamline its voting procedures and administrative operations following the admission in 2004 of 10 new members, mostly in central and Eastern Europe.

One union … divisible?

John (Lord) Kerr, the former British diplomat who served as secretary to the convention, was more realistic than his French political colleague about the treaty's purpose. The Philadelphia Constitution, he pointed out, came into effect when Rhode Island became the ninth of the former 13 colonies to accept it. Once created, the new American Republic was indissoluble. In comparison, the European Union's treaty could enter into force only if and when it was ratified by all 25 member states. It also confirmed and codified the absolute right of each of the signatories to withdraw at any point.

Federalists could point to elements in the treaty that seemed to enhance the authority of the Union vis-à-vis its members. The new post of a European president was designed to give shape and impetus to the deliberations of the European Council. A European foreign minister — also part of the treaty — might likewise have injected greater coherence into the Union's common foreign and security policies. The treaty also proposed a modest extension of qualified majority voting, stating that a measure could pass with a majority of member states representing three-fifths of the population of the EU.

For all that, the treaty would have confirmed and entrenched the essentially hybrid nature of the Union. It also would have reflected a shift in power towards the member states through an enhanced role for the European Council — the assembly of the heads of state or government of EU members. More fundamentally, the treaty defined the Union not through its institutions but with reference to its purposes and powers. The limits on its authority are thus carefully delineated. In this, the European Commission — the Brussels executive, which during the 1980s under the presidency of Jacques Delors had been the motor of greater integration and the extension of the Union's laws — was the big loser. The Commission, lacking strong political leadership, its proceedings made more cumbersome by enlargement, has become more a creature of governments. It is no longer a driver towards the ever closer union of the peoples of Europe envisaged by Jean Monnet and the other founding fathers. The European parliament likewise has failed to garner among electorates the political authority that might have given it a pivotal role in a federal system.
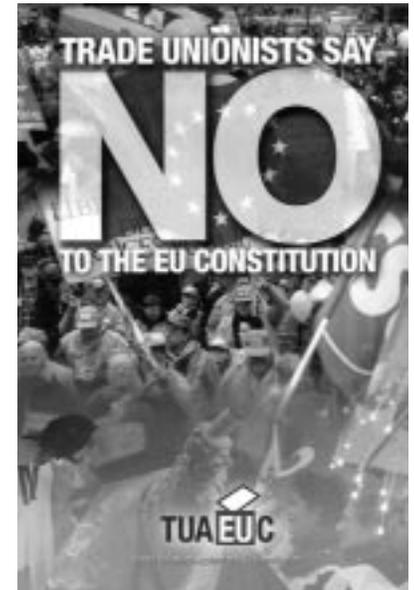
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An Anglo-Saxon plot?

This lack of integrationist ambition in the document was cited by many of the French socialists who opposed the treaty, and it undoubtedly played a part in the treaty's rejection in France's referendum. Leaders of the No vote on the left cast the proposals as an Anglo-Saxon plot, designed at once to import into continental Europe the free-market capitalism of the US and Britain and thus weaken the European model of a social market economy. According to this line of reasoning, Britain's Tony Blair had won the argument against greater harmonisation of economic and tax policies, which would have entrenched the European social market economy.

The No votes in France and the Netherlands, however, also spoke to a deeper political malaise. In part this represented the desire of voters to voice discontent unconnected with the direction of the Union. In France, in particular, the referendum provided an opportunity to protest national economic policies, which have seen unemployment stuck at above 10 per cent for more than a decade. Voters took the chance to punish Jacques Chirac's administration. But it was clear also that the electorates in both countries had fallen out of love with the Union.

The issue that united opponents of the treaty in the two countries was enlargement. In the Netherlands, opposition to the proposed opening of entry negotiations with Turkey mounted due to fears that the advance of a more militant Islam would threaten Dutch liberal traditions. In France, the actual and prospective expansion of the Union translated into a realization that Europe was no longer a French creation. For most of the 50 years since Messina, the prevailing assumption in France had been that Europe was an extension of the nation's domestic interests. More Europe meant more France. That proposition had been challenged by a tilt in the balance of power between Paris and Berlin following German reunification. It was overturned by the admission of 10 new member states to the Union in 2004.

In this respect, the voters in France and the Netherlands sensed what their political leaders knew but had refused to admit publicly: that the fall in the Berlin Wall and the expansion of the Union to the east had fundamentally changed the political geometry of Europe. The Europe built by the founding fathers had defined itself in opposition to the Soviet-led communist bloc. Even after the Union's successive enlargements to nine, twelve and fifteen, the Franco — German alliance provided a consistent federalist impulse. The new Europe emerging during the 1990s demanded a fresh vision embracing the unification of the continent. But even as they embraced the entry of new members, the Union's leaders largely ignored the strategic consequences.

Was Maastricht the high-water mark?

In retrospect, the 1991 Maastricht Treaty can be seen as the high-water mark of federalist ambition. The deal between Germany's Helmut Kohl and France's François Mitterrand to create a single currency marked a major step towards European unity. But it was lopsided. Economic union was never followed by the promised political union. The

"pillared" structure created by the treaty reserved sensitive policy areas, such as foreign affairs and immigration, for governments while maintaining the requirement for unanimity in decisions over taxation. By the time the subsequent treaties of Amsterdam and Nice were agreed, this "intergovernmentalism" had been entrenched and the impetus towards a more explicitly federal structure had been lost to the uncertain consequences of enlargement. Crucially, it had also become apparent that the Franco— German alliance, the motor of integration for more than three decades, was no longer powerful enough in itself to set Europe's direction.

The euro, finally created in 1999, might have provided new momentum. Many believed that the creation of the single currency would reinvigorate sluggish European economies and act as a driver for reform. Thus far the experience has been otherwise. The continent's largest economies have been mired in sluggish growth, unemployment has remained high and budget deficits have widened. The eurozone's Stability and Growth Pact, which enshrines the budgetary constraints thought vital to allow the new European central bank to pursue an expansionary monetary policy, has all but disintegrated. Some Italian politicians have raised questions about that country's future as a member in the pact. Britain has postponed indefinitely any decision to join.

"Old Europe" vs "New Europe"

The fracturing of political cohesion foreshadowed by enlargement was apparent in the approach to the 2003 Iraq war. Britain led a coalition of central Eastern European states (and Italy, which broke with France and Germany) to back the US decision to remove Saddam Hussein. Donald Rumsfeld's rhetorical division of the continent into "Old" and "New" started life as a throwaway remark. But over time it has become an enduring description of Europe's present disarray. Nothing has been found to replace the Franco—German motor as a driver of integration. Old rivalries and more recent disagreements between the French and British governments have thwarted efforts to create an alternative engine of co-operation among the Union's three biggest nations. Political weakness in Paris and Berlin has compounded the sense of drift.

It is too early to say when the Union will emerge from this fractious limbo; or to predict with any certainty its future political dynamic. September's elections in Germany may change things. But thus far the vacuum left by the treaty's demise has been filled by acrimony and recrimination. For the foreseeable future, the Union will operate under the voting and procedural arrangements of the Nice Treaty, a recipe for increasingly cumbersome decision-making. Among the six founding members, there are some who believe that this may be the moment to revive Monnet's dream by creating a "core" Europe with essentially federalist structures within the looser framework of the Union. There are precious few signs, though, of political leadership equal to such a task, or of any appetite among electorates for such a project. More likely, the Union will, for the time being, muddle along, stranded still between the nation state and the federal ambitions of its founders.

Iraqi voters approve new Constitution

On October 15, 2005, the majority of Iraqis voted to adopt a constitution – and a federal government structure. An impressive 63 per cent of Iraq's 9.8 million voters participated in the country's referendum, which received 78 per cent approval, with only 21 per cent of the population against the proposal.

Results of the vote clearly fell along ethnic lines: those who approved the constitution were largely Shia and Kurds; those opposed were mainly Sunni Arabs. Sunnis voted against the constitution in large numbers in two provinces, Salahuddin (82 per cent) and Anbar (97 per cent). However, in order to block the constitution, a two-thirds vote against the constitution was required in three provinces. The majority yes vote came largely from provinces with Shia and Kurd populations, with a staggering majority (99 per cent in one Kurdish province) in favour of a federal structure. In an effort to address Sunni concerns and gain support for the referendum, the Iraqi Parliament on October 11 approved a mechanism that will allow revisions to be made to the Constitution in 2006.

The constitution grants a high level of autonomy to the provinces, giving them exclusive access to future oil fields (current oil production is shared among all provinces), many of which are located in Shia and Kurd regions. Under the constitution, provinces are allowed to join together to develop regional security forces. Sunnis fear that the constitution will divide Iraq into a Kurdish north and Shia south, thus excluding centralized Sunnis from Iraq's lucrative oil production; they also worry that the Shia area in the south will come under the influence of Iran.

Sunni voter turnout: a step toward democracy?

Despite strong Sunni rejection of the constitution, some observers view the referendum optimistically. In January 2005, Sunni Iraqis boycotted the transitional assembly elections, so their participation in this vote is seen as a step towards democracy in Iraq.

Hope that Sunnis will be drawn into the political process (and away from violent protest) is strengthened by the news that three Sunni parties have formed a coalition in anticipation of the upcoming December election in which Iraqis will choose the country's first full-term parliament. In forming this alliance, the Iraqi Peoples Gathering, the Iraqi Islamic Party and the Iraqi National Dialogue aim to increase Sunni representation in the new National Assembly, representation that is currently lacking in the transitional government due to the previous election boycott by Sunnis.

Canadian province says no to sharia law

Would sharia law contradict Charter of Rights and Freedoms?

Dalton McGuinty, premier of the Canadian province of Ontario, has rejected suggestions that Islamic *sharia* law should be used as a legal mediation process for family disputes in the province. He expressed concern that religious family courts could "threaten our common ground."

According to *sharia* law, spousal support for divorced women ceases after three months while men receive most of the couple's assets and custody of any children.

Faith-based tribunals have been acting in Ontario since 1991, when the provincial Arbitration Act gave religious leaders the authority to mediate civil issues, such as divorce, inheritance, property disputes and child custody.

In 2003, however, the Canadian Society of Muslims called for a formalized tribunal wherein legally binding decisions could be made based on the law of the Islamic faith. This drew attention from critics who feel that *sharia* law contravenes Canada's charter of rights and freedoms, and from those who worried how the law would be interpreted in Canada.

Proponents of a legalized family court operating under *sharia* law stress that participation in religious arbitration is voluntary and that both men and women are able to appeal decisions in civil court.

Former attorney-general Marion Boyd was commissioned by the Ontario government to review the Arbitration Act. She found no evidence of discrimination against women in faith-based arbitration However, in response to accusations of discrimination, McGuinty vowed to ban any form of religious arbitration; as a result, existing Catholic and Jewish-based courts will no longer be allowed in the province.

If the proposition had been accepted, Ontario would have been the first Western government to recognize *sharia* law.