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The Struggle for EEurope

Kalypso Nicolaidis

CONSTITUTIONS ARE often born out of tumultuous moments—after a war or in a moment of collective reconciliation. By contrast, the European Constitution rejected by French and Dutch voters last spring sought to translate half a century of peace into a formal political settlement. Although proponents of the constitution, especially within the European left, were dismayed by the No votes, some of them believe that it is possible to turn the rejection into an opportunity both for the left and for the European Union project as a whole.

The EU went through several transitions in the years after the fall of the Berlin Wall. Its elites advanced vigorously a project of expanding links among member states across the continent. It seems clear now that they were unable to persuade a substantial majority of their own citizens to embrace their vision. Opposition by the political extremes—both far left and far right—is not surprising. However, the No votes in May and June demonstrate that the challenge has entered the mainstream. As a result, the EU is in the midst of what may be its most serious political crisis since its inception. How did this come about?

European “federalists” proposed continent-wide constitutions at different times throughout the twentieth century. Following the Second World War, the idea of a United States of Europe was placed on the agenda, but the most ambitious proposals of the late 1940s and 1950s were scuttled by opposition from Gaullists, communists, and assorted sovereignists. As a result, a more pragmatic approach was fashioned by people such as Jean Monnet. It was not enshrined in a constitution but in the 1957 Treaty of Rome that established the European Eco-

nomic Community. The EEC, in turn, served as the legal foundation for European integration. Instead of a grand political design, the idea was to link West European citizens more and more by a sense of solidarity and by common economic interests all while cooperative habits were fostered among policy makers. In this framework, “Europe” evolved from a customs union into an international actor by the 1990s. Intergovernmental bargaining was institutionalized, the European Community’s Commission in Brussels promoted and coordinated EU activities, and a European Parliament (in Strasbourg) slowly expanded its role, all while a European court increasingly made itself felt.

In various ways, the Treaty of Rome and later, additional treaties functioned as a *de facto* constitution. Concurrently, what some call a “permissive consensus” emerged: European elites pushed integration forward with the tacit support of their citizens. Because this seemed to work effectively, why adopt a formal document? The usual answer is, for democracy and efficiency. By the turn of the millennium, the EU had many prerogatives associated with sovereign states: various police powers, border controls, currency regulation, and cooperative (at least partly) foreign policy. Critics charged that there had been no corresponding expansion of political accountability. Moreover, the EU itself kept expanding. Its membership doubled within the last decade, with ex-communist countries lining up to join. Commentators warned that it could survive and thrive only by amending its structure. Although numerous reforms of the Treaty of Rome had been implemented in the last quarter of a century, the results often seemed muddled to everyone but “Eurocrats.” “Europe” had to be comprehensible and relevant to the average citizen.

But was a formal constitution really necessary? What was needed was increasing trans-

parency for EU institutional life and increased democratic participation in trans-European political life. The procedural reforms of the Treaty of Nice, signed in 2000, gave the EU the means to enlarge its membership. Beyond this, adopting a constitution represented a shift away from the successful pragmatism of the past. The EU has been what Joseph Weiler calls a model of “constitutional tolerance,” whereby the national constitutions of member states coexist without an overarching constitutional umbrella, which in turn means that Europeans willingly and constantly renew their commitment to common rules. “If it ain’t broke, why fix it?” asked Weiler. Why try to give this highly original political construct the façade of a nation-state?

Nevertheless, many intellectuals sympathetic to this line of thinking came to support the project, arguing that another kind of constitution could be invented—a constitution not for a nation but *among* nations. However valuable the last fifty years of experience, they argued, the EU needed to explore new forms of democracy beyond the nation-state, and the symbol of a constitution could be recast to serve this ambition. Andrew Moravcsik observed in the July 2005 issue of the British journal *Prospect* that the EU is as democratic as many of its members states and its pre-constitutional settlement a satisfactory equilibrium. That is true enough, but for some it was not good enough. Democracy is a collective contract, and European citizens simply do not perceive “Europe” to be a democratic (and therefore fully legitimate) construct. The EU may have assorted consultative structures and decision-making procedures that give veto power to all sorts of interests and minorities, but this “democratic” whole is less than the sum of its parts. There is no need to chastise Monnet in order to rediscover Pericles. But it is also right to ask how the two can meet.

It would have been useful if this question had been raised more rigorously by some of Europe’s political leaders, such as Joschka Fischer, Jacques Chirac, José Aznar, or even Tony Blair, before they made some of their grander speeches about a new European Union at the turn of the millennium. Instead, the ambition of a pan-European constitution was

revived, promoted by traditional “Federalists” in the European Parliament, Belgium, and Germany and against the wishes of most other national governments. Real issues, but also reformist zeal and some grandstanding, led to a convention that began in 2002 to consider Europe’s future. It was the first time in EU history that delegates other than diplomats or officials debated openly about the union’s foundations, goals, and methods. Central and East Europeans took part as full participants, even though their EU membership would only come about at the end of the whole process. Convention delegates were overtaken by collective hubris and decided to formulate the result of their labors as a “Constitution.” Discussions lasted more than a year, and after government representatives spent another twelve months haggling over sensitive issues, a final blueprint was approved in June 2004.

The document was signed in Rome by heads of state and seemed cause for celebration. A sensible constitutional settlement was in fact proposed, which, although not a significant change from existing treaties, made great strides in clarifying and simplifying the Union. It included a clearly laid out division of powers between the national and EU levels and enabled the EU to acquire a single personality and sign international treaties. The EU’s powers were enhanced significantly in foreign affairs as well as in the administration of justice. Decision-making would also be simplified and made more transparent. The role of national parliaments in EU politics would be increased, and European citizens would acquire a right of petition to demand a change of law at the EU level. And all this was to come together in a single document with great symbolic significance.

WHAT WENT WRONG? Ratification was never going to be easy. It required approval by all twenty-five member states, and almost half of them decided to do so by popular referendum rather than by parliamentary votes. Pundits wondered aloud what might happen, but European elites believed in their persuasive skills. They had also concocted a safeguard: if four-fifths of the member states ratified the text, a vague provision allowed the Council of the European Union to consider its

options. After all, the Danes voted against the 1992 Maastricht Treaty and the Irish against the Nice Treaty; they were both invited to vote a second time in order to get their answer right.

By last spring almost half of the member states had ratified. The process seemed on track. Then polls showed a dip in French support. France's conservative president, Jacques Chirac, was a strong proponent of the constitution, but there was considerable discontent with his domestic leadership. Although there are longstanding "sovereignist" and nationalist sentiments against the EU among the French as among most other Europeans, what was new was the deep division in the mainstream left, which had been a historical supporter of "Europe." The French Socialist Party (PS) was divided. For the first time since its founding in 1971, it held an internal referendum among its 120,000 cardholders, in December 2004.

The constitution's supporters, including party secretary François Hollande and former prime minister Lionel Jospin, won. But five months later, in May, the "Yes-Left" was unable to mobilize its own voters. Former PS prime minister Laurent Fabius, a man whose presidential ambitions are quite open, ignored his party's referendum and campaigned against the constitution. He tapped into a diffuse fear in the electorate—not just among socialists—that the proposed constitution would threaten "the French model"; that is, France's social insurance system. In fact, every socialist and social democratic party in Europe—except for Malta—favored the constitution and so too did the great majority of trade unions. But this did not convince nervous PS voters. Remarkably, there was a mobilization across Europe to persuade the French electorate to vote yes. Appeals came from abroad from mayors, artists, intellectuals, trade unionists, socialist leaders, and heads of state. In the meantime, Chirac made a solemn, last-minute appeal on television to assure French citizens that the European Constitution was indeed "the daughter of 1789."

His effort was futile. The No vote was a resounding 55 percent, and three days later the Dutch followed suit with a No of 62 percent. The campaigns had been intense, and the rates of participation were some 70 percent. It was impossible to dismiss the vote, especially since

the verdict comes from two of the six founding member states. Spain, the only other country to have already held a popular referendum (three months earlier) had only 30 percent participation. Luxembourg voted Yes in July. Since then, the ratification process has been frozen. A summit of heads of government is scheduled for next June to decide what to do.

A Crisis of the Left

French and Dutch voters had diverse concerns. Unsurprisingly, supporters of the constitution in both countries point out that many voters did not cast ballots solely in judgment of the constitution. Some voted to protest globalization; others voted against the prospect of Turkish entry into the EU; and some, of course, simply voted against their own governments. Although many in the Netherlands voted because they resented contributing disproportionately to the EU budget, many in France wanted the same budget to increase with Europe's ambitions. Whatever the reasons for No, it is also true that the Yes camp proved incapable of galvanizing support for its own vision. Indeed, a new constitution anywhere ought to be ratified by an overwhelming majority of people. Yet most controversies during the campaigns were not over constitutional articles about consensual institutional or policy reform, but over provisions simply copied from existing treaties, especially the single market. By seeking the re-foundation of the whole European project, the proposal for a constitution led everyone to confront the magnitude of popular unease with what the EU had become (or rather, perceptions of what it had become).

The EU vote reflects a profound crisis of the left in Europe, especially the French left. It is not simply a clash among personalities, although individual ambitions—Fabius versus Hollande, for instance—play a role in this story. But multiple factors must be considered if we are to see the more structural evolution underlying the current situation. The first factor is sociological, and led to what can be called a "No Vote of Despair." It was anticipated by the voting pattern for the Maastricht Treaty thirteen years earlier. One could say that France was divided in two. Part of the citizenry saw itself as the beneficiary of globalization and

economic liberalization and part felt excluded. The latter held Brussels significantly responsible for the downturn in their lives. Consider some statistics from this past May. Seventy-nine percent of French workers voted No. Seventy-two percent of voters with no diploma beyond high school voted No. Sixty-five percent of people who earned less than 20,000 euros a year voted no. In the French version of America's red-and-blue map, big cities such as Paris and Lyon voted Yes while rural areas voted No. Bastions of the French left's electorate, including the middle class, civil servants, teachers, and employees, have come to see the EU as a project that serves the interests of privileged and cosmopolitan classes.

The second factor is political. It can be called a "No Vote of Frustration." Its source is a strong sense among citizens that they have not been represented adequately and that there is an increasing gap between themselves and what happens in their parliaments, particularly concerning Europe. The German Bundestag voted for the constitution with an 80 percent majority, but polls show that this doesn't mirror public opinion. Two-thirds of French deputies would have supported the constitution. The PS's electorate voted six to four against the constitution, which inverts exactly the ratio in favor and against in the party membership's referendum. Populist left politicians such as Fabius or Oskar Lafontaine in Germany play on these circumstances.

AT THE SAME TIME, the average citizen perceives EU politics in Brussels to be more remote and less accountable than the national kind. EU politics needs to be ever more participatory, transparent, and understandable. It didn't help that delegates to the constitutional convention were appointed by their countries rather than elected and made little effort to reach out to the electorate (except to Web site aficionados) during their eighteen months of deliberations. Even elections to the European Parliament in June 2004 did not give rise to a popular constitutional debate. The European Socialist Party, in spite of its rhetoric, was unable to articulate a transnational vision of constitutional questions. The constitutional process needed a democratic bap-

tism, and it only received it ex post facto with the campaign. Many voters felt that a political ruse was being proposed when they received in the mail a three-hundred-page constitutional text that was, to say the least, user-unfriendly.

The third aspect was ideological and underpinned what can be called the "No Vote of Protest." Ideological extremes challenged the more moderate pro-European mainstays in this vote. In the end, however, France's conservative governing party mobilized 80 percent of its own electorate in favor of the constitution, and the No voters on the left defeated it. What happened in the French PS was a re-enactment of the old struggle within the left between reformist and revolutionary tendencies. What was new this time was the latter's success in advocating a type of pro-European No; that is, making credible the idea that No really meant Yes to "another Europe." Some of the claims advanced against the constitution were scurrilous (for instance, that the constitution would destroy French public services by subjecting them to fair competition constraints or that abortion rights were threatened by an assertion of the inviolability of human life in an article that was actually against the death penalty). Part of the No-Left even mirrored the No-Right's xenophobia. Say "Polish plumbers" in France these days, and everyone will remember repeated references to the presumed cheap labor invasion from Eastern Europe.

But the vote of the No-Left also pointed to real structural weaknesses in the EU. Most important is the fact that the constitution's version of federalism left social protection and welfare provision entirely in the hands of individual member states while Brussels fanned the harsh winds of competition in the pursuit of a frontier-free continent. According to polls, some 40 percent of the French electorate rejected the constitution because they deemed it to be too liberal economically. That is, it did not address unemployment, social dumping, and weakening social protections on a European (rather than just national) level. Fabius—who has not been known for radicalism in the past—made a real point when he contended that the EU had to manage globalization in more effective, fairer ways, and that these ought to include an industrial policy of Euro-

pean-wide infrastructures, an “economic government,” more trans-European social solidarity and transnational transfers, and above all, a European budget that could easily be doubled from its current mere 1 percent of European gross domestic product.

The Yes-Left reformists argued that the EU could best succeed by incrementalism, and that the constitution had to be seen in the broad sweep of European history, including a century of socialist support for European integration. The text might not have been as progressive as they would have liked, but it did include *only* improvements on the social front and establish a satisfactory framework for future political, social, and economic struggle. Their Yes was a *oui de combat*. They pointed out that the “European social model” came in many national variants, and complete harmonization among them, say, in the form of a transcontinental minimum wage (as some radicals demanded) would end up diminishing economic development. Reformers also stressed the importance of institutional and democratic innovations introduced by the constitution, such as the new right of petition and the Charter of Human Rights; these would be lost by a No vote, while the preexisting treaties, the actual target of leftist criticism, would simply remain in force. The arguments, one notes, were not just hard, but also had some humor. When, in an attempt to prove the “ultra-liberal” character of the constitution, the No-Leftists announced the number of times that the word “competition” appeared in the text, the Yes-Left counted the number of times that the term “capital” is found in the *Communist Manifesto*. But in the end, the reformist Yes-Left lost not only because its foes used simplistic (or better, depending on your view) arguments that resonated within a disgruntled public but also because it lacked a clear vision and message. Its leaders persisted in calling the text a “treaty,” in the mistaken belief that this would neutralize the claim that it would set all policies “in stone.” A sense of historical moment had to override the user-unfriendly text as well as specific immediate grievances that could be resolved later in the normal course of politics.

Actually, the European left faces a crisis of modernization. If we assume that globalization

cannot be turned back, then the divide on the left is between those who would leave reform of the welfare state to the right and those who want the left to undertake reforms in order to sustain its values in harsher economic circumstances. Many militants in the French PS still cannot admit that their last government (under Lionel Jospin) was much less successful than Tony Blair’s New Labour in reducing employment and increasing public spending in health and education, especially for the benefit of poorer children. Britain’s post-Thatcher starting point was, to be sure, different from France’s, and in the United Kingdom, as in the United States, prosperity has been obtained by longer working hours and more precarious work contracts and conditions. But French advocates of “another Europe” will never persuade the rest of Europe to adopt and constitutionalize a French model that continues to produce 10 percent unemployment, and twice that among the young.

THE PROBLEM, as Sunder Katwala argued in the July 2005 issue of *Prospect*, is the left’s inability to fashion socially sustainable reform programs that combine growth and social justice. French leftists spend too much time denouncing the “liberalism” they see inherent in the EU logic in the mistaken belief that freer commerce means dismantling the state and undermining all social insurance. But Thatcherite “ultra-liberalism” and a liberal philosophy of regional integration are simply not the same thing, and European socialists will have to acknowledge this difference if they want a successful EU in the future. During the campaign over the constitution, some of its Socialist supporters, including this writer, argued that the French left has to cure itself of *hexagonie*, a malady that goes back at least to the French Revolution and that is based on the notion that a good Europe equals a greater France (“*une grande France*,” as one of Chirac’s ministers put it). Too much of the French left cannot get beyond the old, top-down, Jacobin reliance on the state for everything. This attitude stretches across the French political spectrum and cannot possibly be translated into a successful trans-European program. It would sacrifice Europe’s profoundly progressive philosophy of mutual recognition on the altar of Euro-wide

harmonization as a solution to most problems. The future EU will not be well served by the model of Napoleon's edict-issuing prefects (who were all officials of the central government and told the localities what to do) but rather by something reminiscent of Bill Clinton's use of states as laboratories and examples. The French left has to change its EUtopia and celebrate what is best in its liberal inheritance. Another way of saying this is to call for socialist imagination, not socialist dogma.

Constitution: Dead or Alive?

Some Europeans want to believe that the constitution still has a chance. After the vote, two-thirds of the French still said they wanted a constitution for Europe. Optimists point to the Yes vote in Luxembourg and the fact that a majority of states have now ratified it. A way will be found, they say, to bypass the No votes by downsizing the constitution and passing its main provisions through the Dutch and French parliaments. But it would be a mistake for European leaders to ignore voters and imagine they will get it "right" if they try again. This is the same sort of elitism that helped to produce the No vote in the first place.

Surely, *this* constitution is dead, and Europe's constitutional ambition will have to go underground again while more pragmatic efforts are pursued. Britain took over the presidency of the EU in July, and Tony Blair has argued since then that what European citizens really need are improvements in their day-to-day lives, "investment in the future," a more systematic assessment of "best practices" across states in social policy, increased EU support for research, and coordinated anti-terrorist security. It is no surprise that the British government announced that it would suspend the ratification process indefinitely. Its hope, it seems, is that the constitution will fade from public consciousness.

But it won't, at least not outside of Britain. This moment of constitutional limbo has created an atmosphere in which Europeans are unsure about the governing capacities of their leaders and the EU, although, ironically, this is just what the constitution aimed to address, even if somewhat unsatisfactorily. Doomsday scenarios abound. They predict a backlash against EU institutions or the wreckage of the

euro by populist incitements. More likely, the enlargement of the EU to include the Balkans and especially Turkey will be stalled or frozen. The consequences are unpredictable and possibly very negative, both within these countries and—because of large immigrant populations—within the EU itself. Most important, the great opportunity associated with this enlargement to create a truly credible EU as a "mediating power" would be lost.

If these scenarios play out, constitutional advocates will argue that Europe needs to recover momentum through a political union established by a constitution. Whether it does so or not, a wide-ranging debate about the EU's future and democracy within it is now on the agenda. The older treaties are still in force, and although technical EU business still elicits popular indifference, there is a palpable European politicization process underway. For example, never have the Dutch debated the character of their intertwined national and European identities with such intensity. In France, No-campaigners are now busy putting forth their own amended text while pro-constitution campaigners are mobilizing around the slogan, "Let's save Europe." France is an exception to the rest of Europe because of Paris's desire to lead the continent and frustration that it can no longer do so. But the French debate is also an echo chamber for the rest of the continent.

European elites gave Europeans a constitution without a constitutional moment; now these elites may find themselves in a constitutional moment without a constitution. Perhaps a "para-constitutional" dynamic will emerge in which representatives from the national and European parliaments together renew public dialogue, bringing in civil society in order to initiate a wide-ranging, democratic conversation on politics and society, constitutionalism, and the meaning of a "social Europe." But supporters of a renewed constitutional project will have to take last spring's vote into full account and begin to think in terms of great compromises. It was only by compromises that "Europe" had a half-century of success after the Second World War. It established itself as a new kind of political community, one defined not by a uniform identity—a *demos*—but by the persistent plurality of its peoples—its *demoi*. The EU is neither a union of democracies nor a union as democracy; it can

now be a union of states and of peoples—a “*demoicracy*”—in the making.

Projecting onto today's European scene one of Alexis de Tocqueville's insights can perhaps help us to understand the current crisis and the possibilities that can come of it. Whereas Tocqueville's friends in mid-nineteenth-century France looked at the ills of their times—centralization, bureaucracy, atomization of society—and called for “Liberal Restoration,” he argued that these ills simply represented an inevitable transition from aristocratic to democratic regimes. But while aristocratic power dissolved, he feared, democratic and engaged citizenship was not emerging, even though protests and upheaval did materialize as an old regime proved incapable of reform. The analogy should not be pushed too far, but is it possible that the EU is in a similar moment? Europe has been trying to adapt itself to the post-cold war world since 1989 and is suffering from a kind of in-betweenness. Its leadership has been too elitist, yet its ballot box is sometimes hostage to populism; its structures are highly visible and opaque at the same time. It is not responsive enough to its citi-

zens, yet democratization is so far along that it can only inflate expectations. The big question is this: can democrats take advantage of these circumstances while sustaining what has been best in the the European model? Can rejection of the European Constitution in France and the Netherlands be replaced eventually by a broader democratic logic that can herald the beginning of the end of today's crisis? Europeans, and especially the European left, will have to struggle with these questions in the next year and come up with real answers. ●

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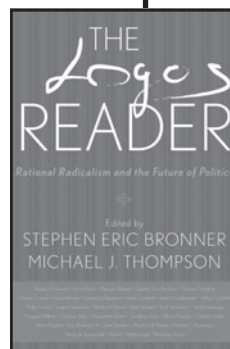
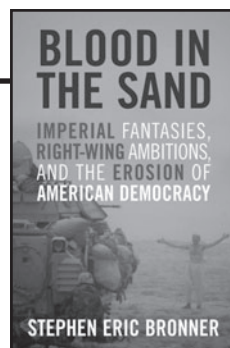
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