

EPS Forum: Debating Federalism and Constitutionalism in the European Union

Federalism is Dead – Long Live Federalism!

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Attempting to re-launch the discussion on the future shape of the European order in May 2000, Germany's Foreign Minister, Joschka Fischer, described the European Union (EU) as a "European Federation" (Fischer 2000). His intervention provoked a heated political debate on the *finalité politique* of the EU that "brought federalism back in." Yet, the federalist expectations appear to get dashed in the Constitutional Treaty, which equally strengthens the supranational and the intergovernmental institutions of the EU. I argue, by contrast, that the Constitutional Treaty is a prime example of the federal nature of the European polity. It constitutes what Alberta Sbragia called an apt "balancing act" between the representation of territorial and functional interests (Sbragia, 1993). Thus, federalism is not only useful for reflecting about Europe's *finalité politique*. It provides a better tool for understanding the current structure and functioning of the European system of multi-level governance and reveals one of the crucial challenges the EU is currently facing: the double legitimacy trap (cf. Börzel and Hösl, 2003, Börzel, forthcoming).

The European Union as a Federal Polity

While discussions of European federalism often imply or even advocate the transformation of the EU into a federal state, federalism as a principle of organizing political authority and power is not necessarily wedded to statehood (Elazar, 1987: 12; cf. Koslowski, 2001). Federalism refers to a spatial or territorial division of power between two or more levels of government in a given political system. This definition covers a wide variety of federal arrangements between confederation and federation as the two state-based extremes of the "federal continuum" (see Burgess, 1986). The European Union shares most features of a federal system (cf. Börzel and Hösl, 2003). The member states remain masters of the treaty, which is the main reason why the EU does not qualify as a federal state (and we speak of a Constitutional Treaty rather than a Constitution). But the EU is a polity that sets a wide range of collectively binding rules for a territorially defined community and its supranational character obliges the member states to enforce European law.

The EU as a Case of Cooperative Federalism

The EU system of multilevel governance corresponds to cooperative federalism, as we find it in Germany, rather than dual federalism, for which the US is a prime example (Börzel and Hösl, 2003). European laws are made at the central level, while their implementation and enforcement is left to the member states. At the same time, there is hardly any area in which the EU can execute its competencies without the consent of the member states represented by their governments in the Council of the EU. These structures and patterns "interlocking politics" and "joint decision-making" have favoured the emergence of a polity in which policies are formulated and implemented by the executives of both levels of government. The European Commission, as the "executive arm" of the EU, has limited autonomy vis-à-vis the Council of the EU, notwithstanding its agenda-setting power, which is based on its right of legal initiative. As mentioned above, it derives its authority neither from the European Parliament (EP) nor from direct elections, and it, therefore, suffers from weak political legitimacy. Moreover, the Commission is heavily dependent on the member states for

financing and implementation of its policies. Hence, it enjoys little “strategic autonomy” as regards designing and pursuing bargaining strategies against the Council (Scharpf, 1988: 255). The EP as a “nascent first chamber” of an EU legislature has gradually managed to increase its co-decision powers in European policy-making. Nonetheless, EU policies can still not be adopted without the consent of the Council. And even within the EP, territorial politics are important, because an effective system of European-level political parties has not developed as of yet (e.g. Hix, 1999: 180-184). Finally, the system of “comitology” – the extensive and opaque network of committees linked to the Council and partially to the European Commission – enhances the extent of territorial interest representation in the EU: experts represented within these committees are usually selected by national governments and often serve in national administrations.

“Executive federalism” in the EU is even more pronounced than in cooperative federal states, where functional (non-territorial) interests can rely on additional forms of interest representation in central decision-making, such as the party system and/or corporatist arrangements. In Germany, for instance, the *Länder* enjoy strong representation in central level decision-making through the *Bundesrat*, the second chamber of the federal legislation, but the federation represented by the directly elected *Bundestag* (first chamber) and the federal government provides a powerful counterweight to this, based not least on the political identity and legitimacy the federation generates, its dominance in the legislature, and its spending power. By comparison, in the EU, neither the European Commission nor the EP is able to counterbalance the dominance of the Council. Moreover, political interest representation in Germany is based on a well-established system of vertical party integration in both chambers of the federal legislature. Finally, neo-corporatist forms of interest intermediation grant German economic interests privileged access to the policy process. The EU, by comparison, lacks an effective system of vertical party integration. There is no central arena of party competition – either within the legislature or within the executive. Nor do the EU’s top industrial associations and trade union federations, such as the employers’ body (UNICE) or the European Trade Unions Congress (ETUC), effectively aggregate and represent the interests of European employers and employees in the European policy process.

The EU and the “Double Legitimacy Trap”

The EU lacks both an effective system of transnational interest intermediation and a vertically integrated European party system that could counterbalance the dominance of territorially defined executive interests in the EU policy-making process. As a result, input legitimacy (democratic participation and accountability) remains weak. At the same time, the effectiveness of EU policy-making (output legitimacy) has been and will be further decreasing with the recent and the upcoming enlargements. The Constitutional Treaty may help prevent that the EU falls into Fritz Scharpf’s famous “joint-decision trap” (Scharpf, 1988) by extending qualified majority voting and allowing for different forms of flexible integration. But it does not provide the EU with sufficient competencies to solve some of the most pressing problems its citizens are currently facing, such as unemployment. This is all the more problematic, since the logics of market integration have been constraining the capacity of the member states to effectively address issues related to economic governance. With the problem-solving capacity of the EU declining, output legitimacy is increasingly less able to compensate for the lack of input legitimacy. As a result, the EU gets trapped in a situation where both input and output legitimacy is weak.

Escaping the Double Legitimacy Trap?

The Constitutional Treaty will certainly help increase the input legitimacy of the EU. But that will not be enough either to compensate for the declining output legitimacy or for the extension of competences necessary to improve the problem-solving capacity of the EU. The

EU still lacks a vertically integrated party system and a functioning system of interest intermediation, which are the most important remedies against the structural deficiencies of cooperative federalism. The envisioned reforms, such as the election of the Commission President by the European Parliament, may provide important incentives for the more effective representation of functional interests, but they will take time. In the short run, the Constitutional Treaty will do little to provide an escape route from the double legitimacy trap.

Federalism, Supranationality, and Confederalism in the EU

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Using a “federal” lens to study the European Union allows the observer to quickly come to grips with the extraordinary progress that the process of European unification has made. The European Union is no longer simply a critical actor in economic matters, but it is now also active (although less effective) in the areas of foreign policy and internal security (justice and home affairs to use British terminology). Thus, the Euro is the “European” currency to which the new ten accession states aspire and the European Central Bank sets monetary policy for the 12 EU member-states which have joined the euro-zone. The EU speaks with a single voice and is a “veto player” in the Doha Round. In response to the the September 11, 2001 terrorist attack on the United States, the member-states approved a “European arrest warrant” which represents a remarkable redefinition of sovereignty to say the least. In a similar vein, in the wake of the Madrid terrorist bombings of March 11, 2004, the EU’s member-states appointed an “anti-terrorism czar.” Their response in both cases was a multilateral European response to an unexpected event, a far cry from the unilateral national responses which characterized Europe’s responses to the oil price shocks of the 1970s. In July 2004, the member-states agreed to establish a European Defense Agency designed to help coordinate military procurement policies and to upgrade European military capabilities. Finally, a proposed constitutional treaty which would significantly strengthen an integrated Europe is being debated across Europe.

Clearly the EU is far more than a traditional multilateral international organization. It combines powerful supranational institutions with institutions which, while intergovernmental, can use qualified majority voting and often promote integration so that treaties about integration partially become “catch up” exercises with existing custom and practice. Small states, for their part, fare far better in the EU than they do in the larger world of international organizations. The anti-majoritarian bias of the EU, familiar to Americans knowledgeable about their own Senate and electoral college, combined with the role of supranational institutions, provide small states with an opportunity to protect their own vital national interests. In fact, the comparatively privileged role of small states is striking when viewed from an international relations perspective but is quite expected by the student of comparative federalism. The “federal vision,” therefore, allows scholars and non-specialists alike to hone in on those aspects of Europe which deviate from the benchmark of states working through traditional international organizations (Nicolaidis and Howse 2001).

That same vision, however, can also ignore that which renders the EU far less than a federal polity or federal state. It is telling that there is no EU postage stamp (nor even discussion of one), no EU-wide patent (a key instrument of economic power), no EU unitary voice in bilateral investment treaties, and no economic identity (no “Made in the EU” label.) . The process of even economic integration is therefore far more incomplete than one might imagine when viewing the EU from a federal perspective. Furthermore, the EU does not live in an international vacuum, and its member-states do not only belong to the EU. The larger member-states in particular have important interests outside the EU; they belong to a complex international world in which old colonial ties and membership in the United Nations and its Security Council, the G7, the International Monetary Fund, and the World Bank are very

important to them.. The EU, while an ever more important referent for even its large member-states, is not their sole preoccupation. In fact, while the EU is debating a “Constitution for Europe,” Germany is lobbying for a permanent seat on the United Nation’s Security Council while Italy is trying to block it by arguing for an EU seat. In a similar vein, there is no discussion of the G7 becoming the G4. The EU lacks external sovereignty and all that goes with it, a key point in an age of globalization and the claims being made by China, Brazil, and India for a greater say in international affairs. Thus, while economic integration is still incomplete, political integration as expressed in external sovereignty is embryonic.

That having been said, federalism is a useful concept when trying to understand the EU if it is viewed as belonging to “confederal” as well as “federal” contexts. In fact, its use in confederal contexts would help us understand how the EU is evolving. The most distinctive feature of the EU is its supranational institutions (the European Court of Justice, the European Parliament, the Commission, and the European Central Bank) which exercise real power and influence in the policy process . Those institutions, however, do not have jurisdiction over all the policy areas in which Brussels has a say. In particular, they are excluded from foreign and security policy where intergovernmental institutions are privileged. Perhaps most importantly, the European Council, the institution which brings together all the Heads of State/Government, has become the most important institutional actor in establishing the EU’s strategic goals (such as enlargement). That institution, which has traditionally been required to make decisions by consensus, can now use qualified majority voting in certain cases and would be allowed to use it more often if the new constitutional treaty were approved.

The political agreement which supports that move in the new treaty is significant even if the treaty is not ratified and does not go into effect. Clearly, a new political bargain has been struck among the member-states, and that bargain has moved the most traditional intergovernmental institution in the EU toward a more confederal mode of governance. The EU will retain its supranational pillar which indeed will expand, but outside of that pillar, the Union is not moving toward the kind of supranational governance which has marked the journey of economic integration. Outside of the supranational pillar, the Union is moving toward a confederal form of governance which will lead to much greater cooperation but without the kind of supranationality which has made the EU so attractive to scholars of federalism.

The difference between a confederal model of governance and a strictly intergovernmental one has been largely ignored in the literature on federalism and on the EU. It needs further thought and elaboration. Whereas confederalism has traditionally been viewed as a failure of integration when contrasted with supranationality, it can in fact be viewed as a success if compared with the kind of intergovernmental arrangements found in traditional international organizations. The kind of confederalism which is emerging in the EU is divorced from supranationality—the traditional “marker” for those searching for federalism in the Union. Yet that same confederalism carries with it institutionalized “shared rule with self rule”—Daniel Elazar’s (1995: 2) core definition of federalism -- which increasingly distinguishes the Union as a whole from an intergovernmental organization. The EU is beginning to combine an extensive use of supranationality with an emerging confederalism. The European Union, therefore, will be characterized by federalism across the board, but it will be manifested differently in different policy areas. To simplify, federalism will manifest itself through supranationality in “domestic” (intra-EU) and trade policy while it will manifest itself through confederalism in foreign and security policy.

The European Constitutional Compromise
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The European Union is world history's most successful experiment in voluntary international cooperation. Today we have an opportunity to take stock of what it has wrought. For decades scholars and statesmen alike defined the European project in terms of where it was going, symbolized by the most famous words in the preamble of the Treaty of Rome: "ever closer union." Now they are beginning to define it in terms of what it is, symbolized by the most striking words in the preamble of the new constitution: "unity in diversity" (Nicolaidis 2004). For the first time since 1950, we can glimpse the end of European integration for the foreseeable future—an emerging "European Constitutional Compromise."

Whether the constitutional *status quo* of the EU was deliberately designed or not, recent events demonstrate that it is both stable and satisfactory to most Europeans. The most striking characteristic of a decade of constitutional deliberation in Europe—discussions of the treaties of Amsterdam and Nice, as well as the constitution—is the conservatism of the concrete result. Voting weights have been adjusted, Commission prerogatives have been transferred to the Parliament, the use of qualified majority voting has been incrementally expanded, and the EU has reinforced some essentially intergovernmental cooperation, as in immigration and foreign policy. Yet these changes since 1992 have not had nearly as fundamental an impact on the EU's basic constitutional structure as the great constitutional decades of the past—the initial negotiation of the Treaty in the 1950s, the founding of the CAP in the 1960s, the founding of the EMS in the 1970s, the Single European Act of the 1980s, and single currency agreed at Maastricht in the early 1990s. Even the process of enlargement, the most important substantive shift of the past decade, has not generated fundamental institutional change or a decisive expansion in the substantive scope of policy-making under the "Community method." Over the next couple of decades the EU will surely expand geographically, reform institutionally, and deepen substantively, but this is likely to take place within its existing constitutional structure.

The emerging "European constitutional compromise can be defined substantively, institutionally, and normatively (Moravcsik 2001, 2002, forthcoming).

The Substance of the European Constitutional Compromise

The EU constitutional system, as compared to the national systems with which it coexists, has limited substantive scope. The EU is highly specialized—handling only 10-20% of national issues (Töller 2003). Important areas of centralized governance (monetary, competition, and internal tariff policy) exist, as do areas of binding joint decision-making (external trade, industrial standards, agriculture, some economic regulation, and some services regulation). Yet the most important areas of state action in the minds of voters remain essentially untouched by direct EU policy-making: taxation, fiscal policy, social welfare, health care, pensions, education, defense, active cultural policy, and most matters of law and order (Majone 1996). In those areas where the EU is still moving forward, moreover, it tends to do so intergovernmentally, with a subordinate role for the Commission, Parliament and Court; or it moves at multiple speeds, as with EMU, Schengen, and other such policies.

This substantive equilibrium appears stable. None of the policies currently excluded from the EU seems a promising candidate for communitarization. Consider the two most discussed candidates for deepening: immigration and social policy. *EU immigration policy* consists largely of "soft" norms, data exchange, codification of international legal obligations (on asylum), some coordination of policy vis-à-vis third countries, and administrative coordination of parallel national policies (such as the granting of visas and passports). In nearly every other respect, national governments retain near total discretion. *EU social policy* has sparked an enormous academic literature, focusing primarily on the innovative "open method of coordination" (OMC). OMC has been hailed as a revolutionary form of regulation,

a fundamental transformation of the state, a source of spillover, a trigger for an emerging European identity, and an effective counterweight to “neo-liberalism.”

If results be the judge, OMC is none of these. It encourages national officials to exchange information, benchmark policies, and evaluate results, but there is little evidence that OMC has had *any* impact on policy outcomes (c.f. Zeitlin and Pochet, forthcoming). More fundamentally, little evidence suggests the existence, viewed from the perspective of the national governments, of underlying negative policy externalities—a race to the bottom, a fundamental coordination problem, etc.—that a centralized social policy might mitigate (Scharpf 1999). And any serious effort to harmonize European social policy would immediately create a fundamental conflict between rich and poor governments that might well tear the EU apart—as we shall see below.

The Institutional Form of the European Constitutional Compromise

The absence of opportunities for substantive expansion in EU policy-making on a scale required to alter its basic constitutional order is further assured by its institutional structure—which is in fact quite appropriate to its mandate. In the language of comparative government, the EU is an international confederation with selected federal institutions, such as a court, central bank, and regulatory legislative capacity. Its confederal constitutional order imposes exceedingly tight limits on instruments of governance, thereby rendering change through either everyday policy-making or constitutional revision quite unlikely.

We begin with the obvious. The EU hardly taxes, spends, implements or coerces; in many areas, it lacks a legal monopoly on public authority. It has no police, army, or significant intelligence capacity—and no realistic prospect of obtaining any of these. EU taxation is capped at 2 per cent of European public spending, compared to 70% of US public spending by the federal government. EU finance is locked into a small range of policies, leaving little room for discretionary spending by Brussels technocrats. The EU’s workforce numbers less than 30,000, of which 4-5,000 are real decision-makers—no larger than that of a medium-sized European city and *one-fortieth* of the non-military federal workforce in the US. The task of implementing EU regulations necessarily falls to national parliaments and officials. The only major exceptions are the ECJ and the ECB, yet these institutions, while helping to explain why the EU is indeed a distinctively new constitutional form, are exceptions rather than the rule in EU governance, and do not alter its ability to expand into new issues.

All this limits the issues that the EU could possibly handle, absent a unanimously-approved redesign of its structure far more fundamental than anything ever contemplated by the most starry-eyed centralizers. The EU seems condemned, therefore, to remain essentially confederal and, in regard to its capacities, a “regulatory polity”—a system with instruments of regulatory legislation, but little discretion in regard to fiscal (as well as coercive and administrative) matters (Majone 1996).

The Normative Legitimacy of the European Constitutional Compromise

Most analysts believe that the success of the EU has provoked a crisis of legitimacy. Many conclude that the EU must democratize or decay. With its distant capitol, weak parliament, desultory elections, lack of political culture, and unfamiliar institutions, the EU naturally triggers public skepticism. Redressing the “democratic deficit” was the primary public motivation behind the recent constitutional convention. And perhaps this is why, despite the manifest successes of the EU over the past decade, many Europeans—not least those who work in Brussels—act as if the EU is failing.

Whatever the origins of the high level of public suspicion concerning the EU today—its so-called “legitimacy crisis”—the “democratic deficit” is surely not a fundamental cause. Within advanced industrial democracies, there is no correlation between direct popular control and trust in political institutions. A full discussion of why the EU is in fact democratically legitimate—or, at least, as democratically legitimate as its member states—would take us beyond the scope of this essay (Moravcsik 2002). Suffice it to say here that the EU is constrained by checks and balances, more transparent than existing member states, and broadly accountable to both national governments *and* directly-elected Europarliamentary representatives. The institutions that act independently at the EU level—the constitutional court, the central bank, the public prosecutor—are precisely those deliberately insulated from populist pressure in almost all modern democratic systems, and for good normative and pragmatic reasons. Finally, the EU’s current mandate is roughly what most European citizens say they want—with the exception of a defense policy for which they are disinclined to pay.

There are those who criticize the fact that EU politics does not generate intense public involvement. European voters do not fully exploit their current opportunities to participate in existing European elections, in large part because of the absence of transnational political parties, identities and discourses that might help render European political participation more active, extensive and meaningful to the citizen. And why this absence? The history of democratization teaches us that citizens need intense stakes to generate intense political activity. In Europe, one is forced to conclude that it is because citizens *fundamentally* do not care about what the EU does. The inherent apathy of Europeans toward EU activities is hardly surprising. Of the most salient issues in European societies today—health care, education, law and order, economic performance, pension and social security policy, and taxes—none is primarily an EU competence. (The only exception is economic performance, where the centralization of powers in the extraordinarily independent ECB may temper this relatively sanguine assessment of the “democratic deficit.”) The central problem of European democracy is thus to give voters sufficient incentive to invest in a set of issues about which they care little.

In a Europe without salient issues, new institutional avenues for participation, such as referendums and constitutional conventions, are not a solution. They do not necessarily encourage rich deliberation by an engaged population, but instead lead to unstable plebiscitary politics in which individuals have no incentive to reconcile their concrete interests with their political choices. This is the lesson of European elections and referenda on recent treaties, where public views are chaotic. It is the lesson of the recent constitutional convention, where public views were apathetic. The most intensely engaged citizens were Euroskeptics, whose democratic demands would never be satisfied by EU reform—despite the modest, even conservative, content of the constitution. From this perspective, the recent episode of constitution-making can be seen as a grand political experiment based on the hope that a public convention could circumvent haggling and national vetoes and activate an engaged pan-European citizenry. The European Constitutional Compromise held firm.

Conclusion

Every constitutional system reaches a moment of maturity, a moment when it need no longer deepen in order to legitimate itself. It is high time EU scholars—and EU statesmen—begin to treat the EU as a mature polity. The “finalité politique” we observe today is not the perfect design of a Monnetist technocrat or a Spinellian democrat, but the result of incremental evolution. European societies have invested so much in this evolution that the resulting institution would surely remain stable in the face of almost any conceivable future circumstance. It is, after all, the only distinctively new constitutional form to emerge and prosper since the rise of the social welfare state a century ago. In a decade or two, it will help

govern a united Europe stretching from the Arctic Circle to the border of Iraq. Is this not achievement enough?

“Don’t Underestimate Nationalism”

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Why is the EU not a federal state, and why has movement in the direction of federalism been arrested? The most powerful reason lies in the mobilization of national identity against further European integration. Group attachments can be extraordinarily powerful, and few more so than attachments to territorially defined communities. A student of modern Europe might heed a simple dictum: “Don’t underestimate nationalism.”

Since the early 1990s and the Maastricht Treaty, the course of European integration can no longer be explained in terms of national bargaining, interest-group pressures, or supranational empowerment. Public opinion, national party positioning, and national referenda now play a decisive role. National governments, interest groups, and European actors respond to public opinion, and try to shape it, but they find themselves being swept in unanticipated directions. The fact that national governments have agreed to a quasi-federal Constitutional Treaty does not make it happen. European integration has unleashed populism, and government after government has found the call for a popular mandate irresistible. Referenda on the Constitutional Treaty are slated for the Czech republic, Denmark, France, Ireland, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the UK.

What, then, drives public opinion on European integration? Economic factors are important, but they are less potent than national identity. It is perhaps no surprise that a quantum shift in authority—which is what sixty years of European integration adds up to—should jolt embedded identities. What seems to matter most is whether a person’s identity is inclusive or exclusive. Recent research reveals that exclusive national identity—the sense that one’s national identity involves a total commitment that rules out other territorial identities—is a powerful source of Euroskepticism. What appears decisive is not the intensity of one’s national identity, but the way that it relates to other territorial attachments (Carey 2002; Diez Medrano 2003; Hooghe and Marks 2004; McLaren 2002).

Are we witnessing a surge of exclusive nationalism in Europe? The answer, according to public opinion data, seems to be no. In the very years that exclusive national identity has become more politically salient, from the early 1990s, it has probably become less rather than more common. The proportion of the public who say that they feel closer to their country than to the European Union declined by 17 percent in the 1990s (Citrin in Risse, Brewer, and Hermann 2004). The mobilization of national identity against European integration is taking place at a time when European culture is becoming more cosmopolitan and when identities are becoming more multi-level.

The connection between national identity and attitudes toward European integration is not fixed, but is *constructed* in political debate, and that construction is cued by national political parties and national media. In countries where political parties tend to converge on Europe, national identity is more benign for European integration; in countries where political parties diverge, national identity is more strongly associated with Euroskepticism. The causal arrows between political parties and citizens probably go in both directions.

Identity—not distribution—appears to drive party positioning. If one wishes to know where a national political party stands on European integration, the most telling indicator is how that party stands on a new politics dimension ranging from GAL (Green/Alternative/Libertarian) to TAN (Traditionalist/Authoritarian/Nationalist) (Hooghe, Marks, and Wilson 2004). The association is anchored by parties on the TAN side—e.g. the Front National, Vlaams Blok, Austrian Freiheitspartei, Danske Folkspartiet, and the Polish Peasants Self-Defense party—which are vociferous in their condemnation of European

federalism, and which connect this to their core concerns with national culture, national community, national sovereignty, and above all opposition to immigration. The Vlaams Blok's campaign slogan in the 1999 national election was "In charge of our own country," in 2003, it was "Safe Flanders" and in the recent European election, the Blok came out strongly against "European citizenship and a European Constitution" because, "Only states can decide who their subjects are. The EU is no state and should never become one."

Political parties that cannot easily accommodate European integration in their core ideological concerns are riven. Conservative parties in France and Britain have burst their seams over the dispute between market liberals, who are willing to water down national sovereignty if this is necessary for market competition, and nation-oriented traditionalists, who are not.

Enlargement to central and eastern Europe has reinforced—not weakened—the influence of national identity, as one might expect in countries that have been denied independence for so long—though there is an interesting twist. Nationalism tends to be stronger on the economic left, particularly among unreconstructed communist parties, than on the economic right.

Government after government has found itself embroiled in unpredictable referendum fights. Up to this point 28 national referenda on EU issues have taken place in 17 member states, and the trend is picking up steam. Countries that have no history or constitutional place for referenda—including the UK and the Netherlands—are caught up in this. The German constitution expressly forbids referenda, but this has not insulated Germany from an ongoing debate about whether the constitution should be changed to allow a referendum on the Constitutional Treaty.

This has had profound consequences for domestic politics, injecting a populist dynamic that is virtually impossible to contain, and it has had a chilling effect on the prospects of European federalism. Leon Lindberg's *permissive consensus* has been transformed into its antonym, a *constraining dissensus*. When one compares referendum results in the same country across time, the level of support for European integration in consecutive referenda has dropped in 9 of 11 cases. This does not instill confidence in ratification of the Constitutional Treaty. Has the era of big-deal treaties come to an end because governments fear referenda?

Now there are several ways to deal with the political potency of exclusive national identity. One is to retrench. The European Union has reaped large and transparent functional benefits, and arguably the best reforms lie in its past. Why not stop here?

Alternatively, one might take an indirect path to more integration, focusing on low sovereignty issues in the expectation that identity will eventually catch up with multi-level governance. This, in essence, was the strategy favored by Jean Monnet, Robert Schuman, Walter Hallstein, and Jacques Delors along with the neofunctionalists. Younger people are more likely to identify with Europe and less likely to be exclusively national in every EU country.

A third strategy is to take the functionalist cure. David Mitrany also wanted to go around, rather than over, national identity, but that meant creating jurisdictions to fulfill particular purposes, each of which was responsible for a particular function, each of which served a particular constituency. Today we would describe this as variable geometry or "condominio" (Schmitter 1996).

Mitrany diagnosed a fundamental tension between the benefits of integration and the "deep roots of nationality" and what he has to say about this is yet more relevant today than when he wrote, "We are favored by the need and the habit of material cooperation; we are hampered by the general clinging to political segregation [that is, to national states]. How to reconcile these two trends, both of them natural and both of them active, is the main problem for political invention at this juncture of history" (Mitrany 1948 [1966]: 151).

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