

Democracy in Europe. By Larry Siedentop. New York: Columbia University Press. 2001. xi + 254 pp. incl. index. Hard cover. ISBN 0-231-12376-0. \$27.50.
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“The people made the Constitution, and the people can unmake it. It is the creature of their own will, and lives only by their will.”

- Justice John Marshall, *Cohens v. Virginia*, 19 U.S. 264, 389 (1821).

The Will of the People?

I. Introduction

At the beginning of the twenty-first century, it seems that nearly all countries have embraced democracy (in word, if not in deed); the end of the Cold War seemingly removed the last obstacle to its spread across the globe. But, of course, things are never so simple. In Europe, the birthplace of popular government, a debate has begun over the future of democracy. It seems strange that a continent that has for centuries held itself up as a model for the rest of the world now finds itself growing less democratic, at a time when many areas of the world are slowly becoming more so. Beyond the glimpse of irony lies a more serious question: how should Europe address the desire for democracy within the European Union (EU)?

Politicians and scholars have struggled with the form that the EU should take since the European Communities were founded. In the past two decades, as the Union grew closer and gained more areas of competence, the demand for democratic processes became more insistent. Indeed, it was a member of the European Parliament who coined the phrase “democratic deficit” to describe the lack of popular input into EU decision-making. [1] Many have sought a solution to this problem, but even the gradual increases in the powers of the European Parliament—the only directly-elected body within the Union—have not significantly alleviated the democratic deficit.

What, then, is the solution? In *Democracy in Europe*, Larry Siedentop calls for institutional reforms within the EU to permit greater public participation and to create a federalist structure. Such reforms would be embodied in a European Constitution, which he believes would “bring to the surface and formalize the...[EU’s] role in creating a society of individuals, drawing attention to the way the state fosters a value in all who are subject to it, the value of a fundamental or ‘moral’ equality,” since all citizens share rights and responsibilities, and thus a common identity. [2] Such an approach to the question of democracy divides the problem into two parts: the emotional (the need to garner popular support behind the EU institutions) and the institutional (the desire to define the institutions’ role, and the peoples’ part in it). While *Democracy in Europe* sometimes confounds these two issues, the recognition that they are two distinct matters may shed light on the debate over popular participation in the European Union. In some ways, the relationship between the two interests seems clear: institutional arrangements often affect popular approval, and societal attitudes bear on the creation or reform of political bodies. However, in some cases, the desires of institutional actors seemingly differ from those of the people; *Democracy in Europe* seeks to explore how such conflicts are and should be resolved.

This article will explore the various concerns confronting Europe at this critical time in its

development. It begins with the question of identity, examining the problems which the current lack of a European consciousness may engender, yet noting that the seeds may already have been sown. The absence of either a popular internationalist leadership or a threat sufficient to impel European unity compounds the difficulties already inherent in building a common identity among the peoples of over a dozen nations. Consequently, *Democracy in Europe* looks to structural reforms within the EU as an avenue to increase popular participation in the European project, with the belief that democratic governance will strengthen people's interest in, and respect for, EU decision-making, creating a "culture of consent" to follow Brussels. There are a number of options for EU institutional reform; it can adopt the statist French model (toward which it already tends), the unstructured British model, or the federalist German and American models (which differ in their balance between the center and the periphery). Beyond the general question of form of governance, Professor Siedentop suggests particular institutional changes, while overlooking others. In the end, this article seeks to weigh the obstacles to democratic governance in the EU against the possible solutions, to see if Professor Siedentop's guarded optimism is warranted.

II. The Problems of European Identity

European scholars have long predicted that a new consciousness would emerge across the continent as political and economic forces drew the nations closer together. In 1882 Ernest Renan asserted that "[n]ations are not eternal. They had a beginning and they will have an end. And they will probably be replaced by a European confederation." [3] Today, even as European nation-states cede part of their sovereignty to the EU, there is little evidence that the nations themselves are fading away. Moreover, there are few signs of the emergence of any European identity coexistent with individuals' national or regional identities. In the eyes of many, the absence of a sense of "European-ness" demonstrates the gulf between the average citizen and the EU institutions, which have provided little basis around which to build a common consciousness.

Looking to the past, Professor Siedentop suggests that, despite these obstacles, Europeans *could* develop some type of common identity. He identifies three factors which he believes were fundamental to the creation of a medieval clerical community which spanned the continent: a common language, creed and cosmopolitanism. [4] These factors allowed the churchmen of the Middle Ages to share ideas, for though they came from many countries, they all spoke Latin and followed the Church. Accordingly, the clergy shared a European identity—the identity of a European Church—which coexisted with their national and familial identities. The difficulty today, *Democracy in Europe* posits, is that the modern national elites do not have the common tongue, beliefs and internationalism of their medieval religious counterparts. Nevertheless, there are indications that Europe may be developing the elements of a common identity, as many in the European elite speak English, believe in democracy and market economics, and participate in international exchanges. However, the isolation of the EU elites and the lack of an exterior threat to spur European unity has impeded the creation of a European consciousness. At present, then, it is difficult to determine if or when a European identity might emerge.

Democracy: The European Creed?

In looking for a belief to unite Europe, religion no longer presents the common creed that it did in the Middle Ages. Today, the Church is splintered into many sects, and many Europeans are

merely nominal adherents, while large numbers of immigrant laborers have made Islam a significant minority religion in several European countries. Furthermore, the secularization of politics would not permit such a religion-based political understanding. Clearly, then, religion can no longer play the part of shared belief system that it once did.

Surprisingly, *Democracy in Europe* does not explore other possible belief systems which might bind Europeans. In particular, it ignores the possibility that a commitment to democratic governance and free trade could unite the continent. This is a startling omission, given the post-Cold War consensus in the West that liberal democracy and market economics will lead to prosperity and peace, not simply in the United States and Europe, but throughout the world. This belief is enshrined in the Treaty on European Union, which declares that the Union is built on an “attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,” as well as a commitment to “strengthening and the convergence of their economies and to establish an economic and monetary union.” [5] Also, before they may accede to the EU, candidate countries must meet the Copenhagen criteria, which center around “democracy, the rule of law...[and] the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.” [6] Over the past half-century, the EU has promoted popular governance and free trade across Europe (both inside and outside its borders). Europeans have demonstrated a commitment to democracy and free trade; these principles are at the heart of Europe, and may constitute the new creed.

Are Europeans Provincial?

Although Europeans share a belief in democracy and trade, *Democracy in Europe* asserts that “despite the new rhetoric of Europeanism, Europe has perhaps never been more divided by national cultures than at present. The partial fusion of political élites in Europe resulting from the necessities of the early post-war period has largely disappeared,” and the media and tourist authorities are not strong enough to support internationalism alone. [7] Under this view, the recent popularity of xenophobic parties such as the *Front National* in France and the *Freiheitspartei* in Austria demonstrates that the nations of Europe are withdrawing into themselves. In such circumstances, it is hard to imagine that a European identity could flourish.

While nationalism indisputably remains a potent force in Europe, its appeal should not be overstated. The mass demonstrations across France, protesting the second-place finish of *Front National* candidate Jean-Marie Le Pen in the first round presidential elections in April 2002, show that even nationalism has its limits. Hundreds of thousands have taken to the streets, carrying banners proclaiming “We Are All From the Same World” [8] and “No to Fascism, to Exclusion, to the National Front.” [9] While Le Pen’s stunning performance in the first round of elections might seem to indicate that France has become more xenophobic and isolationist, it appears that immigration and European integration were only minor issues in an election dominated by questions of crime and unemployment. [10] Moreover, the aftermath of the elections demonstrates that extreme nationalism remains on the fringe of French society. Although nationalism retains a significant role in European politics, its influence is limited by the peoples’ belief in democracy, pluralism and the benefits of international engagement.

The EU has done much to advance internationalism in Europe. While contacts between

national elites remain largely intergovernmental, the EU has instituted a number of policies and programs which promote international cooperation at the local level, such as twinning programs to foster cultural and education exchanges between cities in different member states. [11] Additionally, as a result of the free movement of labor guaranteed by the EU, approximately 5 million European citizens work in another member state. [12] Thus, it would be premature to declare cosmopolitanism dead in Europe; the EU has increased the possibility of cooperation across the continent, and many citizens have taken advantage of the opportunity provided.

English: The European Language?

The movement of workers within Europe is indubitably impeded by the multitude of languages spoken across the continent. Yet, in classrooms, boardrooms and government offices across Europe, people of various nationalities come together to share ideas, frequently in English. Though English is the unofficial *lingua franca* of Europe (and much of the world), Professor Siedentop dismisses it summarily, since it “is also the language of one state and national tradition in Europe,” although he acknowledges that French—also a national language—superceded Latin as the universal second language in Europe in the seventeenth to nineteenth centuries. [13] Consequently, the difficulty with English cannot be merely that it is spoken in Britain and Ireland. Rather, the problem lies with the French, who have long contested its adoption as the official language of European cooperation, fearing it will destroy their culture and give the British (and the Americans) an advantage within the EU.

In spite of their efforts to stem the tide of Anglicization, it seems that the French are fighting a losing battle; “[i]n the 1990s, English overtook French as the language in which most European Commission texts are initially drafted.” [14] The EU’s current procedure, which requires documents to be reproduced in eleven languages, is cumbersome, and few believe it will even be possible after enlargement. Although English is not the official European language at present, this seems to be more a matter of semantics than a practical obstacle to communication. Language need not be a major impediment to European unity, if the peoples of Europe are willing to favor communication over national pride.

Are Eurocrats the harbingers of European identity?

Although Europeans may, to some extent, share a creed, an international perspective and a language, these factors have not crystallized into a common identity. One explanation for this stagnation may be the lack of a European leadership capable of sparking a sentiment of “Europeanness”. However, the EU officials and administrators (Eurocrats) seem perfectly placed to lead the process of identity formation: they work together in English (and sometimes French), they believe in the benefits of regional integration, and they have an internationalist outlook. Nevertheless, *Democracy in Europe* spares Eurocrats hardly a glance. Given that they seem to fit the model of the medieval clergy, the dismissal of Eurocrats as a force for internationalism indicates that the lack of a European identity is not predicated merely on the parochialism of national elites, but also on the isolation of Eurocrats. National administrators have little incentive to advocate for Europeanization, with the consequent transfer of their powers to Brussels; Eurocrats, who have a strong motive for advancing the EU, have little public voice to do so. Hence, a significant obstacle to the growth of a European consciousness is the lack of a coherent

international elite with a strong social voice and ties to the citizenry, and thus the power to create a belief in Europe as a political entity that responds to the people.

Identity: Us versus Them?

Also contributing to the weakness of European identity is the lack of an outside force against which to define Europeanness. Most national identities were forged in wars or other crises, as a people (“us”) distinguished itself from some outside power (“them”). The American colonies did not perceive themselves as an entity because of geographic proximity, or even common language and heritage, but rather because they fought together against British rule. During the Cold War, the EU stood in contrast to the Warsaw Pact. Since the fall of the Berlin Wall, the EU has appeared relatively secure, although Professor Siedentop argues that “there *is* a crisis in Europe. It is a delayed crisis resulting from German reunification,” and the consequent acceleration of EU integration.[15] Even if the rapid deepening of EU ties was accomplished rashly enough to constitute a crisis, it is not clear that this type of crisis creates a “them” in contrast to which Europe can create its own identity.

The French efforts “to defend a European identity against facile Americanization” seem to imply that France views the United States as a possible force against which to define a European identity. [16] But given the percolation of American popular culture into European (and especially French) society, it seems unlikely that the average Spaniard or Dane sees America as an alien force, against which he must draw together with the Belgians and Portuguese. As the EU and the United States share a commitment to the ideals of democracy and free trade, they cannot be rivals in the sense necessary to create an “us” versus “them” identity. While the world does not lack ideological divisions, stateless threats like terrorism and economic destabilization do not provide a strong rationale for regional integration.

Thus, as *Democracy in Europe* indicates, one of the biggest challenges presently facing the EU is the absence of a European identity, which stems (at least in part) from the paucity of the Europeanist political class and the absence of a pressure for unification. Additionally, the lack of popular participation in European institutions also impedes the creation of a European identity; for the people to develop a sense of belonging to the EU, they must feel that they have some stake in the decision-making process. Consequently, Professor Siedentop looks to institutional change, rather than a European leadership, to create popular support behind the EU.

III. What Form of Democracy for Europe?

Before beginning institutional reforms to increase the opportunity for popular participation within the EU, Europe must decide what type of democracy is best suited for modern Europe. *Democracy in Europe* identifies two major schools of thought on democratic governance, one led by Montesquieu, the other by Madison. The vision promulgated by Montesquieu is that of an elite-led democracy, based on a sociopolitical hierarchy which creates leisure time that the aristocracy may spend on governance. [17] Conversely, the Madisonian view is that of a populist democracy, where the people create a political class from amongst themselves, based on ability. [18] Modern democracy leans toward the Madisonian approach, although the prevalence of the wealthy in political life demonstrates that Montesquieu was not wholly wrong in his approach. In determining

how to structure its democracy, the EU must decide what roles the elites and the people will each play.

Democracy in Europe examines three possible models of European democracy—French, German and British—patterned on the respective national political system of the largest EU member states. The French model privileges centralization and efficiency, and consequently gives significant authority to the national elite. [19] The British model is an informal division of power between the national and local elites, based on a “common sense.” [20] The German model is strongly federalist, with the local and national elites sharing government power. [21] There is also the implicit American federalist model, which differs from the German in that it divides governmental powers between national and local elites. Each model presents attractive features which the EU would like to incorporate in its own structures, but each also presents certain drawbacks that would need to be overcome.

The French Model

At present, the EU seems to be following the French model, with most of the decision-making power concentrated in the Council and the Commission (and, to a lesser extent, the European Parliament). In some ways, the French model may benefit the EU, since it provides clear decision-making structures. Given that it is currently comprised of fifteen member states and envisions enlarging to twenty-five or more in the coming years (or decades), the EU cannot afford fragmentary decision-making. The French system provides clarity, as most government functions are centralized and can be coordinated with relative ease.

Nonetheless, though the French model suits France, there are indications that it may not work well on the European scale. One drawback of the French model is that it privileges political elites over ordinary citizens, because centralization gives bureaucrats in Paris power that those in the provinces find difficult to combat. Furthermore, it may not protect the diverse cultures and interests of all Europeans. The French have long struggled with minority rights, with perhaps fewer positive results than other European nations. The strong centralizing impulse of the French system has impeded efforts to create meaningful regional governments. Despite recent efforts at decentralization, Corsicans, Basques and other groups still fight for the right to teach their languages in schools and govern their own regional affairs. [22] Given the difficult relationship between France and its minorities, there is reason to doubt that French federalism would ease the diversity concerns already present in the EU.

The British Model

Would the British model be a better alternative for Europe? Professor Siedentop feels that it would not. Although Britain was the birthplace of modern representative government, British democracy was traditionally based on its aristocracy—whence the theories of Montesquieu—and powerful local lords kept the national government at bay. In his view, the recent breakdown of the British aristocracy has led to increasing centralization, and (because there are no clearly defined rules to prevent London’s usurpation of power, only traditions and informal arrangements) the United Kingdom’s unwritten constitution has been unable to halt the trend. [23] Additionally, Britain has “lost its voice,” that is to say, it no longer advocates for liberalism in the ways that it

formerly did. [24] The unspoken premise of *Democracy in Europe* is that the EU may face the same fate without a written constitution: increasing centralization (with the resulting threat to diversity) without any real plan or purpose.

In spite of its weaknesses, the British political system has certain strengths to which the EU aspires. The first is the “culture of consent which British political institutions had created.” [25] This is the very feature which *Democracy in Europe* sets out to build around the European Union. A “political culture of consent...[is] an almost familial relationship with the law, a relationship which stands in contrast with the view of law as a remote and alien thing, something imposed by ‘others’ at one’s own expense,” and which involves both a desire to participate in political life and a willingness to accept the resulting laws and rules. [26] Professor Siedentop argues that the British culture of consent was founded on social hierarchy, with the aristocracy peopling the House of Lords and otherwise dominating national politics. Yet the British government also includes a House of Commons, from whose ranks the Prime Minister and Cabinet are drawn. Therefore, the ordinary British citizen has a direct connection to government, someone to petition for change and censure if results are not forthcoming. And, what is perhaps most important, the members hold real power, because Parliament is the central organ of the British government.

Although Britain’s unwritten constitution may be seen as a weakness, it may also be conceived of as a strength, for it permits flexibility. Because the relationship between the national and local governments is not entirely fixed (although years of practice have created traditions), they can adjust their interactions as needed to meet changes in the political environment. One example is Britain’s recent devolution, which has given the Scottish and the Welsh significant autonomy vis-à-vis the central government, and the Deputy Prime Minister has hinted that greater devolution may occur. [27] Beyond flexibility, devolution demonstrates the British system’s ability to support diversity, giving each of its constituent groups their own assembly to address local problems and administer regional affairs. Indeed, the existence of parliaments at Westminster, Cardiff and Edinburgh gives the British citizenry significant control over its political elites, something that would benefit the EU.

While it is true that “Britain is seen—not least by its European partners—as lacking enthusiasm for larger causes or ideas,” it does not necessarily follow that this is due to an inability to participate in the ideological debate. [28] There are other plausible explanations for the United Kingdom’s lack of zeal for the European project, such as skepticism and national pride. Britain’s aloofness toward Europe does not necessarily mean that the British are unable to lead Europe; perhaps they are simply unwilling. Nevertheless, the increasing calls for a written constitution—by republicans and monarchists alike—suggest that the British political system is in need of clarification, if not structural change. [29] The British people’s discontent with their unwritten constitutional system should give the EU pause, even as it seeks to develop many of the strengths of the British political system.

The German Model

The other alternative to the French model is the German political system, which is strongly federalist, with the *Länder* (states) retaining significant power in national decision-making. In many respects, the German model seems to embody the characteristics Professor Siedentop desires

for the EU: it “takes enormous trouble to create different spheres of authority and to protect each from the others – minimizing the risk of encroachments from the federal government,” and the strong regional governments create a relatively direct link between the people and the political elites. [30] This system might also be more politically expedient, given the strength of nationalism in Europe, in that it would guarantee national governments a role in EU affairs (unlike the French model, in which the national governments—particularly national legislatures—could become increasingly marginalized). Whereas today, decisions are made either by national governments or by Brussels, the German model would create a third option, which might be especially valuable for sensitive policy areas: certain decisions could be made jointly, with the assent of both EU institutions and a majority of national governments required for EU action. While this joint decision-making could be time-consuming (particularly if the assent of both the executive and the legislature were required at each level), special procedures could be created to reduce delay. Properly implemented, joint decision-making could increase policy coordination among EU member states, and give the EU a stronger influence in areas now largely reserved for intergovernmental cooperation.

Yet the German model has not been very popular in Europe, for reasons that *Democracy in Europe* does not explain, except in noting that German decentralization is perceived to be inefficient. [31] The German federal structure does sometimes lead to delays in political decision-making, largely because the central and regional governments maintain separate budgets, and often the federal government gives the *Länder* unfunded mandates. [32] This is a structural problem that could be remedied, for example, by requiring transfers of funds to accompany transfers of authority. Therefore, the German model does not seem structurally unsound or unsuited to the EU. One might surmise that the German example has not been better received in Europe largely because the French fear that accepting federalism would be tantamount to permitting German leadership of the EU, and the Germans are too wary of seeming aggressive to push it. But for Europe to adopt a federalist structure, Germany must become its champion, for it is the only federal member state with the clout to steer the EU down that path.

The (Implicit) American Model

Despite its similarities to German federalism, Professor Siedentop suggests that the American political system has certain distinctive characteristics which could benefit Europe. He does not address the American system as an explicit model, perhaps because the French would be likely to reject the allusion to a “United States of Europe” out of hand, given their distrust of any American influence in EU affairs. Nevertheless, the American model creates a division of sovereignty that could be beneficial for Europe, because it creates separate spheres for each level of government, allowing each to fulfill its duties efficiently. [33] (This is unlike the German political system, which requires the *Länder* and the federal government to reach a consensus in many areas.)

Even if the EU were inclined to adopt the American model, it could not be implemented in Europe without modification. There are certain features of the U.S. system which do not comport with the present situation in Europe. For example, American politics does not explicitly recognize the

existence of regions, whereas “[i]n Europe there are regions which retain memories of a political existence earlier than those of nation-states...[and which] see an unrivalled opportunity to weaken the states to which they are currently subordinated.” [34] In determining what will be the constitutive units of the EU under the American model, then, it seems necessary to choose between nation-states and regions. But maybe this is a false choice, and the two are not mutually exclusive. A “United States of Europe” could conceivably have three levels of government—regional, national, and European—each with its own powers and responsibilities. Such a system would have the benefit of creating a sphere of autonomy from groups such as the Corsicans and the Basques, which national governments may be unable to grant for political reasons (but which they might otherwise willingly accept, in exchange for peace with the armed rebel movements). [35] Indeed, several European nations—particularly Spain, but also others, like France and Britain—have begun to recognize the political legitimacy of their internal regions, giving them autonomous powers for local decision-making. [36] Hence, the beginnings of a regional-national-European structure exist already, at least in a few member states. The erection of a three-tiered system would create additional complexities and demands for coordination; however, it would also permit closer ties between the elites and the people, thereby opening the door to greater democratic participation (depending, of course, on the selection of representatives and other avenues of popular input selected).

Conversely, because the American political system has many opportunities for popular participation, there is also the potential for populism to erupt and disrupt the political process. This has not occurred in the US, Professor Siedentop posits, because American politics is dominated by lawyers—particularly those from the Northeastern Establishment—who place great emphasis on following the legal procedures inherent in political decision-making. [37] In effect, then, he asserts that there is a bit of Montesquieu in the Madisonian system, a constraining elitist force (which, like the British aristocracy, contains an element of birthright, albeit with more upward mobility). While there is likely truth in this view (who can doubt the influence of the Kennedy clan?), the existence of a strong, legally-trained elite alone cannot explain the resilience of American democracy. By their very nature, democratic systems are vulnerable to populism if the political ruling class does not heed the needs of the citizenry. In the United States, then, one might hypothesize that the voting public itself believes in the rule of law, largely due to the great respect Americans have for their Constitution.

Given the recent resurgence of populism (especially popular nationalism) in Europe, Professor Siedentop fears that, without a Constitution, the EU will have no weapons to keep such movements at bay. He hopes that a European Constitution would have the same effect as the U.S. Constitution, cementing the rule of law and guaranteeing minority rights. Europe finds itself at a crossroads, seeking a path which will permit efficiency without sacrificing diversity. Federalism presents one possible mechanism for the EU to achieve its goals democratically.

IV. Federalism

In its current debate over institutional reforms, Europe is not simply considering where the decision-making power should lie, but also what the EU should become. The EU has the potential to become a global political actor (with a statute equivalent to its considerable economic power), if it succeeds in creating centralized governance structures. However, few are willing to attain such

goals at a cost of losing their regional distinctions in language and culture. Thus, the need to create a feeling of belonging on the part of the populace requires that the tendency toward centralization be limited, to permit the survival of cultural distinctions.

Why Federalism?

According to Professor Siedentop, a federalist system is the only sensible way for Europe to arrange EU-national government relations. The main advantage of federalism is that it is “a political system which makes it possible to combine the advantages of small states and large states, without at least some of the disadvantages attaching to each.” [38] A federal Europe could blend the political coherence of a small state with the open-mindedness of a large state, lessening the risk of both political and moral oppression. Moreover, a federation would create clearly delineated spheres of authority for both the EU administration and national governments, thereby combating the tendency toward centralization to Brussels, which could reduce the space for diversity.

While the possibility that the EU should be a confederation has been debated, *Democracy in America* discounts that option with little discussion. He asserts that the EU has already gone beyond the confines of confederation in many areas, itself assuming sovereign powers, so it is no longer possible to create a mere confederation in Europe. Additionally, he notes “the weakness of earlier confederations such as the Holy Roman Empire and Switzerland – which depending on the member states to execute orders, had either come to be dominated by the strongest member or had become impotent” as a potential reason for those creating governments to beware such a model. [39] Nonetheless, it seems that a confederation would also permit strong international cooperation in Europe, while creating even greater possibilities of national diversity. Perhaps Lady Thatcher’s recent suggestion that Britain curtail its participation in the EU signifies that Europe is not yet prepared for federalism, and a confederation could be a more acceptable. [40] On the other hand, Lady Thatcher’s position seems to be in the minority (even in her own party), and a confederal approach could lead to inefficiency, and would complicate the administration of the Euro for those countries that have adopted the single currency. [41] Accordingly, a confederation may not be the solution to the problems of democracy in Europe.

A European Constitution?

For federalism to have the benefits *Democracy in Europe* suggests are possible in the EU, European leaders would have to undertake significant structural changes in the Union’s institutions. This poses inherent difficulties, for the Union finds itself in the unenviable position of seeking to build public enthusiasm for and participation in a body which already has weaknesses and failures, rather than creating popular support behind a new idea. Only a deliberate and far-reaching overhaul of the EU institutions, and a realignment of Brussels’s relations with the national capitals, could convince Europeans that the EU was an actor in their interests, in which participation was beneficial and could yield real results.

Professor Siedentop proposes several modifications to the European institutional structures that he feels would foster the growth of democracy within the EU. The first, and arguably most

significant, change he recommends is the drafting of a written constitution for Europe. Such a constitution must be more than a delineation and separation of powers between the various levels and organs of government; it must also include a declaration of rights, along the lines of the American Bill of Rights. *Democracy in Europe* evinces high hopes for a European Constitution, hypothesizing that it could “bring to the surface and formalize the state’s role in creating a society of individuals,” while its federal structures would “minimize the need for coercive power and...maximize a willing obedience to laws, which are perceived as protecting local and regional as well as national interests.”[42] A constitution could lift the veil surrounding the internal workings of the EU, giving ordinary citizens a better understanding of how the Union functions, and what place they have in the process.

The idea of a constitution has sparked a great deal of interest, and the EU has undertaken the European Convention, which many expect will produce a draft Constitution for Europe. The EU itself states:

The task of the Convention is to pave the way for the next Intergovernmental Conference as broadly and openly as possible. It will consider the key issues arising for the Union's future development, for example: what do European citizens expect from the Union? How is the division of competence between the Union and the Member States to be organised? And within the Union, how is the division of competence between the institutions to be organised? How can

the efficiency and coherence of the Union's external action be ensured? How can the Union's democratic legitimacy be ensured? [43]

It seems that the EU is struggling with the very issues presented in *Democracy in Europe*, and many scholars and government officials expect that the EU will adopt some form of constitutional document in the relatively near future.

While *Democracy in Europe* advocates the drafting of a European constitution, it does not address the form such a constitution should take. While the European Convention’s mission to prepare for the next Intergovernmental Conference suggests that the draft constitution (should it produce one) could take the form of a treaty. Yet some influential European politicians—including the Vice President of the Convention—have suggested that, to gain public support, a constitution would need to be ratified by the European public through a referendum. [44] Such a popular vote would, it is asserted, involve the public in the process and make the European Constitution feel more like a contract among citizens, rather than an agreement between states. While this argument is appealing, the experience that most countries have had in instituting their national constitutions demonstrates that popular ratification is neither a prerequisite nor a guarantee of success. In the United States, for instance, the Constitution was enacted by a small group of male landowners, yet most Americans today identify strongly with the U.S. Constitution and count themselves among “We the People.” Conversely, upon the dissolution of the USSR, Russia and the other newly-independent states adopted constitutions by referendum, yet they have not been overwhelmingly successful in ensuring democracy and the rule of law.

The enactment of a constitution (at least in the sense of most Western constitutions) presupposes the existence of a people from whom the power to govern derives. (In this regard, it is

significant to note that the U.S. Constitution was not written until 1787, over a decade after the Revolutionary War drew the American colonies together.) Since Europeans do not yet share a common identity, the creation of a European Constitution would seem to be premature. Additionally, it is difficult to determine what sort of document would be appropriate, given that the EU combines supranational and intergovernmental elements. This unique character has led some scholars to assert that: “[t]he EU does not have and does not need a ‘Constitution like a State’s,’ simply because it is not a State”. [45] As the European structures are still in flux, and the balance of powers is still being determined, a document which purported to specify the institutional arrangements would probably not be definitive, and could impede future reforms.

While a constitution might not be appropriate, given the current stage of European integration, this does not imply that the European Convention should not produce a draft document for consideration at the next Intergovernmental Conference. However, it does suggest that the draft should take the form of a treaty. At present, an international agreement could serve the process of democratization within the EU by instituting structural changes, but also by clarifying the EU decision-making process. The EU is often criticized for the complexity of its institutional arrangements, and if the peoples of Europe are unable to understand how decisions are made in Brussels, they are unlikely to feel like participants in the EU. [46] To serve this purpose, the treaty would need to be a user-friendly document, carefully laid out, reasonably brief, and with minimal legal language. Properly drafted, a treaty could serve many of the same functions as a constitution, but without the call to a European people (which does not perceive itself in this manner) and with a greater potential for future change (as it is easier to amend a treaty than a Constitution).

A European Senate?

One of the main criticisms of the EU’s present institutional structure is that it presents very few opportunities for popular participation. The only directly-elected body within the EU is the Parliament, which *Democracy in Europe* aptly calls “hardly more than a fig-leaf which fails to conceal the...power of the European Commission and a bureaucracy imperfectly controlled by the Council of Ministers.” [47] Indeed, the executive and legislative powers of the Union are largely wielded by appointees, either on the Commission or in the Directorates-General (which prepare and administer much of the Council’s work). While the role of the European Parliament has grown significantly, it still pales in comparison to that of the Council and Commission. With such a system in place, it is not surprising that few Europeans feel a strong connection to Brussels.

Professor Siedentop posits that a European Senate, comprised of national legislators indirectly elected to serve contemporaneously in their home Parliaments and in the EU, could significantly increase the democratic content of European decision-making. The Senate would become the upper chamber of a bicameral Parliament. He suggests that a Senate could “provide the nation-states of the Europe with more effective guarantees against centralization...[and] encourage greater devolution of authority and power within nation-states,” if a certain number of the seats were allocated to members of regional assemblies.[48] To ensure that the Senate was effective in promoting diversity, the EU would need to invest it with significant legislative powers. In this way, Europe’s regional and national legislatures would have a voice in decisions that would affect them and their constituents.

While he argues that the indirect election of European Senators would not compromise their democratic legitimacy, the example Professor Siedentop uses demonstrates the potential drawbacks of the proposed arrangement: “the United States Senate, perhaps the most powerful legislative body in the Western world, began as an indirectly elected chamber....Not surprisingly, that helped to make Senators zealous in the protection of states-rights.” [49] Since 1913, U.S. Senators have been directly elected, because differences of opinion and ideology within the states made it increasingly difficult for state legislators to reach consensus on their senatorial nominees. To solve the deadlock within the state legislatures, states began selecting their senators by referenda, a practice which became so widespread that the Seventeenth Amendment was easily ratified. [50] It is easy to imagine a similar phenomenon in the European member states, particularly those with strong regional identities (like France, Spain, Britain, Italy and Belgium, among others), where the allocation of senators could become highly politicized. If every ethnic group in Europe were given a seat in the European Senate, the body would be too bloated to function effectively (particularly with EU enlargement on the horizon); on the other hand, there would be no simple way to determine which regions were represented and which were not. Hence, the indirect election of European Senators could create more divisions than unanimity, a result in direct contradiction to the aims of the European project.

As a possible solution to the difficulties that a dual-chambered Parliament might pose, some European politicians (including Prime Minister Guterres of Portugal) have suggested that the European Senate be merely a consultative organ, lending its wisdom and experience to the EU, but without fierce battles being waged over membership, and without adding another layer to the bureaucracy in Brussels. [51] This would create a European legislature along the model of the British Parliament, wherein the House of Lords has the power to comment on bills and delay their enactment for further consideration, but does not have the authority to block their passage altogether. While such a body might produce better-crafted legislation than the EU currently enacts, given the limited powers of the Parliament at present, a consultative Senate might not reduce the democratic deficit significantly.

Furthermore, there are several concerns which neither an authoritative nor a consultative Senate could address. The first is that placing all the democratic accountability in one body is dangerous; “giving the European Parliament too much power could actually have disruptive effects and aggravate the legitimacy problem of the EU even further.” [52] It is important to recall that the legislature represents the peoples of Europe, but most of the negotiation and cooperation in Europe occurs between the national governments and the Commission and Council. If the European Parliament were given the predominant role in EU legislation, this would create a lacuna between those who make the decisions and those who enforce them. Such discontinuity could impede the flow of communication between Brussels and the national capitals, making EU decisions seem even further removed from the concerns of the citizenry. Rather than pinning the hopes of democracy in the EU on the Parliament, it would be better to increase democratization throughout the EU.

The second issue that a Senate could not resolve is the feeling of distance between the peoples of Europe and their representatives in the Parliament (which would remain one chamber of a bicameral legislature). In a 1999 interview, British Prime Minister Tony Blair noted the irony that “[t]he European Parliament is more directly democratic but it is more remote from people than

their National Parliaments.” [53] While the isolation of European legislators is a difficult problem, the solutions lie in the area of greater accountability and public engagement, rather than in the creation of a second chamber. Although a Senate would not impede the opening of the current Parliament to greater public involvement, it would be a mistake to believe that the formation of a new chamber would obviate the need for changes in the current one. In sum, the consequences of a European Senate are unclear; while it would permit a greater role for national legislatures, arguably promoting democracy, it is not evident that the creation of a bigger Parliament is the most effective means to reduce the democratic deficit within the EU.

The European Commission

Surprisingly, *Democracy in Europe* does not discuss reforms to the other European institutions, particularly the Commission, despite their obvious contributions to the democratic deficit in Europe. Indeed, it is difficult to understand how democracy in Europe can readily be promoted when “most of the power resides with the Commission and the Council of Ministers—neither of which is directly elected, and neither of which has much public accountability.” [54] Because Commissioners are appointed, they are accountable only to the national executives that nominate them. Furthermore, because most Commission proceedings are closed to the public, neither the citizenry nor the national legislatures are well placed to judge the efficacy of their representation. [55] Given such institutional arrangements, it is quite unremarkable that most citizens feel shut out of EU decision-making.

To address this problem, the Commission must somehow open itself to the public. One possibility is by direct election of its members. While they are meant to represent all of Europe, Commissioners are currently nominated by the national governments of the member states; such a system could be altered to replace national nominations with national elections. Once elected, the Commissioner would be expected to act independently, just as appointed Commissioners do. This could create a dilemma for Commissioners, as the public pressure to represent national interests could make it difficult for them to act independently. This would be particularly true if the Commission were to open its proceedings to the public, either by allowing visitors or by distributing transcripts of the discussions, as would be necessary to allow the public to cast informed votes. If Commissioners were directly elected, the only apparent means to ensure their independence would be to limit them to a single term. Term limits have their own drawbacks, particularly as they create turnover, thereby reducing efficiency, and reduce the public’s choice of representation. While the direct election of Commissioners remains a possible amelioration of the democratic deficit, it has significant limitations which would need to be addressed carefully before such a system were implemented.

Another option would be to revamp the nomination procedure, so Commissioners would be selected not by the national executives (which are already represented in the Council), but by the national legislatures. In effect, this would create a system of indirect election, making the Commission more publicly accountable without exposing it directly to popular pressures. Moreover, it could give national assemblies a voice in the EU similar to that of the proposed European Senate, without adding to the bureaucracy in Brussels. Still, the election of Commissioners could be plagued by some of the same problems as the election of Senators, based on cultural and regional divisions. Yet such divisions would likely be less relevant, since

Commissioners are explicitly expected to be independent—unlike Senators, who are meant to represent their constituents—so the selection of a Basque Commissioner would have less relevance to the promotion of regional interests than would the election of a Basque parliamentarian.

The least revolutionary reform, in some ways, would be simply to open the Commission's proceedings to the public eye, either by permitting observers or by distributing transcripts of the deliberations. This would allow European citizens to petition their governments to re-nominate (or not) a particular member. Such a reform could reduce the effectiveness and independence of the Commission, since its members would be mindful of their public role and perhaps censor their discussions. As long as their work remains, for the most part, shrouded in secrecy, the Commissioners will be viewed with a certain degree of distrust or skepticism. Therefore, it seems that the Commission must discover ways to open at least some of its proceedings to public view, and to internalize the popular suggestions and criticisms that result from such scrutiny.

V. Conclusion

The preceding overview of European politics reveals a continent that lacks a common identity, searching for a political structure which can create unity without sacrificing diversity. No national model promises the optimum balance between stability and flexibility. The path of institutional reform is fraught with difficulties, as politicians do not want to favor democracy in Brussels at the expense of efficiency and practicality.

Despite these difficulties, the situation within the EU is not as bleak as it might seem. There are many factors which bind Europeans together, so the seeds of a common identity have already been sown. The EU may draw inspiration for the national governments of its member states (and others, such as the United States) in reshaping its political structure. And there are institutional reforms available that, while difficult, offer the promise of increased democratic participation in Brussels without complicating decision-making unduly.

Where, then, does Europe find itself in the debate over its democratic future? *Democracy in Europe* is cautiously optimistic. There are many steps that the European Union may take to reduce the democratic deficit and increase popular participation. The difficulty European and national officials will face is in selecting those which will best suit the EU and satisfy the demands of the populace. In examining their options, European leaders must acknowledge that none of the models advanced—French, British, German, or American—can achieve democracy in Europe. The EU's best chance to satisfy each of its constituencies is to combine elements of each model, as well as features of other political systems which may be helpful in the European context (such as Spanish regionalism). Many of the proposed reforms draw on different national traditions, and the next Intergovernmental Conference will likely be faced with the task of weighing and balancing their suitability to meet the many interests of Europe.

It is still early days for the European Union, and it is not clear that a "United States of Europe" is either possible or desirable. The Union is still in its adolescence, with many institutional and political changes to come. In such a situation, it is not surprising that few in Europe are prepared to support Brussels wholeheartedly, for it is not readily apparent what it may become. At present, a treaty setting out the institutional structures and rights guaranteed by the

Union could be the best option for Europe, because such a treaty would provide needed clarification now, and could form the basis for a future European Constitution (if such a document were required). A constitution is merely a set of legal arrangements creating a political structure; it may enshrine the principles of democracy, but unless the people believe in it, it cannot itself produce a democratic Europe. In the end, the institutions in Brussels cannot create a “culture of consent,” they can only provide a space for democracy and popular participation to flourish.

[1] According to his biography on the European Parliament’s website, Bill Newton Dunn, MEP, first used the phrase “democratic deficit” in the 1980s in a pamphlet describing European politics. See “Bill Newton Dunn MEP”, at <http://eld.europarl.eu.int/members/newtondunn.asp> (last visited Mar. 19, 2002).

[2] Larry Siedentop, *democracy in europe* 94 (2001).

[3] Anne-Marie Thiesse, *La lente invention des identités nationales*, *Le Monde Diplomatique*, June 1999, at 12, (quoting Ernest Renan, “*Qu'est-ce qu'une nation?*,” speech at the Sorbonne, March 11, 1882)(English version at: <http://MondeDiplo.com/1999/06/05thiesse>)(last visited Apr. 13, 2002).

[4] Siedentop, *supra* note 2, at 131-32.

[5] Treaty on European Union, Nov. 10, 1997, Preamble, O.J. (C340) 149 (1997).

[6] Michael J. Baun, *A Wider Europe* 44 (2000)(citing the European Council’s Presidency Conclusions).

[7] Siedentop, *supra* note 2, at 131.

[8] This banner may be seen in an Associated Press photograph, *available at*: <http://story.news.yahoo.com/news?tmpl=story&u=/020424/168/1g3n1.html> (published April 24, 2002).

[9] This banner may be seen in an Associated Press photograph, *available at*: <http://story.news.yahoo.com/news?tmpl=story&u=/020425/168/1gdih.html> (published April 25, 2002).

[10] Henri Astier, *Le Pen’s Voters*, *BBC News Online*, Apr. 23, 2002, at: http://news.bbc.co.uk/hi/english/world/europe/newsid_1946000/1946764.stm .

[11] The town twinning program is conducted by the Directorate-General for Education and Culture, at: http://europa.eu.int/comm/dgs/education_culture/towntwin/index_en.html (last visited Mar. 18, 2002).

[12] This is according to the estimate of the Directorate-General for Employment and Social Affairs, *at*: http://europa.eu.int/comm/employment_social/fundamri/movement/intro_en.htm (last visited Mar. 18, 2002).

[13] Sientop, *supra* note 2, at 132.

[14] *Should Europe speak English?*, BBC News Online, Apr. 30, 2001, *at*: http://newsvote.bbc.co.uk/hi/english/talking_point/debates/european/newsid_1285000/1285447.stm.

[15] Sientop, *supra* note 2, at 27 (emphasis in original).

[16] *Id.* at 136.

[17] *Id.* at 2-7.

[18] *Id.* at 7-10 (as observed by de Tocqueville).

[19] *Id.* at 105.

[20] *Id.* at 106.

[21] *Id.* at 105-06.

[22] *See, e.g.*, Robert Graham, *Setback for Jospin Plan to Give Limited Autonomy to Corsica*, *Fin. Times* (London), January 18, 2002, at 7; Peter Ford, *Corsican Autonomy Divides French Leadership*, *Christian Sci. Monitor*, August 25, 2000, at 7.

[23] Sientop, *supra* note 2, at 71-72.

[24] *Id.* at 65.

[25] *Id.* at 64.

[26] *Id.* at 23.

[27] *See, e.g.*, *National Assembly 'Can Expect More Powers,'* *West. Mail*, February 28, 2002, *available at*: <http://icwales.icnetwork.co.uk/0100news/0200wales/page.cfm?objectid=11657769&method=full> (last visited Mar. 28, 2002); Cathy Jamieson, *Early Success for Devolution*, *Morning Star* (Edinburgh), April 5, 2002, at 10.

[28] Sientop, *supra* note 2, at 65.

[29] *See, e.g.*, Michael Jacobs, *How to Modernise the Monarchy and Satisfy Republicans As Well*,

Indep. (London), April 7, 2002, at 25.

[30] Siedentop, *supra* note 2, at 105.

[31] *Id.* at 108.

[32] The German Constitution (*Grundgesetz*) mandates supplementary transfers from the federal government to financially weak *Länder*, but does not require that every transfer of administrative or enforcement authority be accompanied by a corresponding grant of federal funds. *See* GG art. 107-110 (F.R.G.).

[33] Siedentop, *supra* note 2, at 7-8.

[34] *Id.* at 174.

[35] *See* note 18, *supra*.

[36] Siedentop, *supra* note 2, at 146.

[37] *Id.* at 178-79.

[38] *Id.* at 26.

[39] *Id.* at 8.

[40] *See, e.g., Thatcher Calls EU 'Folly,' Says Its 'Destiny Is Failure'*, Wall St. J., Mar. 19, 2002, at A16.

[41] The Tories' silence, rather than affirmations, in the wake of Lady Thatcher's comments shows that—although the party does not wish to be disloyal to its erstwhile leader, it does not wholeheartedly support her position. *See* Andy McSmith, *Tories maintain silence over Thatcher's Europe outburst*, Daily Telegraph (London), Mar. 19, 2002, at 6.

[42] Siedentop, *supra* note 2, at 94.

[43] This statement is taken from the Introduction to the official website of the European Convention, *at*: <http://european-convention.eu.int/Static.asp?lang=EN&Content=Introduction> (last visited Apr. 13, 2002).

[44] Giuliano Amato, Address at New York University School of Law (Mar. 26, 2002).

[45] Jean-Claude Piris, *Does the European Union Have a Constitution? Does it Need One?*, 24 Eur. L. Rev. 557, 583 (1999).

[46] Indeed, in its definition of transparency, the EU recognizes that “[c]omplaints regarding a lack of transparency tend to reflect a general feeling that the European institutions are remote and

secretive and that decision-making procedures are difficult for the ordinary European citizen to understand.” *Glossary: Institutions, Policies and Enlargement of the European Union*, at: <http://europa.eu.int/scadplus/leg/en/cig/g4000t.htm#t5> (last visited Apr. 12, 2002).

[47] Siedentop, *supra* note 2, at 122.

[48] *Id.* at 148.

[49] *Id.* at 149.

[50] This information is available on the U.S. Senate’s website, at: http://www.senate.gov/learning/brief_15.html (last visited Apr. 14, 2002).

[51] Antonio Guterres, Address at New York University School of Law (Mar. 20, 2002).

[52] Piris, *supra* note 45, at 579.

[53] *Id.* (citing the Financial Times, Mar. 23, 1999).

[54] John McCormick, The European Union 130 (1996). *See also* Andrew Moravcsik, *Conservative Idealism and International Institutions*, in 1 Chi. J. Int’l L. 291, 306 (2000).

[55] McCormick, *supra* note 46.