

the Conservative case for a new European Constitution

A Tory Europe Network essay by

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Introduction

The submission of the draft European constitution by Giscard d'Estaing at the Thessalonika summit has provoked the sort of anguished debate that is unique to Britain. The form of such debates is well-known: scaremongering by anti-European newspapers and politicians followed by a defensive reaction from government.

Chapter one: The EU constitution

Of course there is an important debate to be had about the merits of a European constitution. However, everyone who supported the enlargement of the European Union - as the Conservative Party always has - accepted that a new constitutional Treaty would be required to make the Union of twenty five member states work better than the Union of fifteen states ever did. We need to make sure that the Union and its member states are capable of making quick and clear decisions in all those areas where we have agreed that Europe needs to have competence. We need to ensure that every member state is bound by those rules it has signed up to. We need to ensure that new areas of policy on which we have all agreed - because we could achieve more by cooperating on them - are developed in a sound and democratic way that respects the rights of the nation states.

What is being proposed will not herald the 'end of a thousand years of British history', nor does it justify any other of the hyperbolic claims that are currently being made. The current draft Constitution is by no means perfect - indeed there are some areas where I have serious concerns. But it is necessary to put a new constitution in place once sensible concerns have been addressed.

The Constitution cannot possibly provide the answer to all the EU's problems. It will not for example tackle the structural problems inherent in some European economies which will have to be tackled by the national Governments of the States concerned because they are not and should not be subject to the EU on such matters as taxation levels, health and pension policies. And any constitution certainly will not make for easy reading. It will not fit pocket-sized into every EU citizen's wallet, and I certainly do not expect it to be drummed into every child at school.

But the constitution can make clear that Europe will be a Union of Nation States and will never be what the British call a "federalist" institution. It can make clear what the boundary is between those big subjects which are within European competence, so that we bind ourselves to work together by agreed rules on them, and those subjects which will remain exclusively the responsibility of the Governments and Parliaments of Nation States.

The draft Constitution already makes clear that it is the member states that confer powers on the EU. Ar-

Article 1 of the Constitution states explicitly, “...*this Constitution establishes the European Union, on which the member states confer competences to attain objectives they have in common.*”

In other words the member states pool sovereignty in the EU in specific areas where they have all agreed that it makes sense to work together. It sets out a division of powers which means the Union only has competence where the member states have given it and it acts at EU level only when it needs to. When it does act, its laws prevail over member states' laws – a principle essential for the smooth functioning of supranational institutions and a principle which we have always accepted since a Conservative Government and the British Parliament signed up to it in 1972.

There are other proposed measures which I welcome. I am not and have never been a federalist. Therefore I particularly welcome the strengthening of the European Council with a permanent presidency. This ensures that the nation states should and will remain central to the EU decision-making process. Similarly I welcome moves to increase the involvement and powers of national parliaments to allow them to prevent unnecessary EU action. I also welcome attempts to make the Council of Ministers more open and accountable by opening up its sessions.

There is and always has been a case for extending Qualified Majority Voting (QMV). When we were in power, Margaret Thatcher insisted that the extension of QMV was essential for creating a genuine single market. In most cases QMV is in our national interest. So why be opposed to it in principle? I personally believe that the extension of QMV should be looked at on a case by case basis – I am for example persuaded of the case for having QMV to create common solutions to a common European problem like asylum. But I also believe that in areas of core national sovereignty – such as foreign policy, defence and tax – unanimity should be retained. And, given that a number of the other member states concur, it is clear that this will remain the case in the future.

Finally while foreign and defence policy should remain subject to unanimity, why shouldn't there be a single office of EU foreign policy spokesmen to replace the current confused arrangement whereby my former colleague Chris Patten, Senor Solana and whoever happens to be representing the EU presidency at the time all try to share the same role. So long as foreign policy decisions are made and agreed by national governments unanimously, they would be more effectively voiced by one spokesman than by three.

One of my fears on this issue is that some of my colleagues are fighting the battles of Maastricht and sometimes even the Treaty of Rome. European citizenship, the primacy of EU law, and legal personality are already established principles of the Union as it has evolved largely under Conservative Governments for more than a quarter of a century. Some euro-sceptics still claim to believe that these are new unacceptable moves aimed at creating the centralised super-state that they are always trying to raise scare stories about.

We need to look at this in a sensible and dispassionate manner. We need a very 'British' debate accepting the need for a constitution while looking at each proposal on its merits.

On the issue of the referendum, I am a firm believer that Parliament is elected to govern and when it comes to ratifying this treaty that is exactly what it should do. We are not talking about a Constitution for Britain but a new Constitutional Treaty for a supranational organisation to replace the Treaties we have *already* signed up to. I understand that some countries are having referendums on this issue, but this is not the case in every member state. The Treaty must be ratified according to the constitutional traditions of each member state, and in this country it is Parliament which debates the detail of treaties and this should remain so in this case. If we continue to allow the mass media to press the case for the referendum to ever more subjects, we will destroy our own British constitutional tradition of a strong Parliamentary democracy for ever.

Chapter two: Associate membership = withdrawal

While there is clearly a strong case in principle for a European constitution, there is also room for debate about its detailed provisions. Indeed, the Convention on the Future of Europe has already discussed the present draft exhaustively. Now the governments of the member states will examine it intensively during the forthcoming Inter-Governmental Conference (IGC) and they will undoubtedly change it again before presenting it to their own Parliaments.

It is one thing to object, as many people do, to one or other proposal in the constitution. It is quite another to question the entire basis of European integration of which the constitution is the latest stage. Yet that is exactly what many anti-Europeans have done, and I fear that some Conservatives may be veering in that direction - some have proposed that the UK should take up a kind of 'associate membership' of the European Union, while proposals for 'reserve powers' or to end the supremacy of EU law amount to the same thing. Just like the calls for 'renegotiation' in the past, these ideas ultimately amount to a road map towards withdrawal from the European Union - not least because most of them would require the repeal of the Accession Treaty and the Parliamentary Act which we passed when we joined the European Community in the first place.

It is hard to see what form a new semi-detached status could take, even if it were possible. Perhaps advocates have in mind a Norwegian or Icelandic model. Outside the EU but members of the European Economic Area (EEA), the Norwegians have full access to the European single market. The downside of this is that the Norwegian government has no choice but to accept single market laws and regulations made by the member states. This is described as 'fax democracy' because new laws arrive on the fax from Brussels. Nor is there a financial benefit to Norway's status – the money they will pay in the future for EEA membership is, on a per capita basis, similar to Britain's net contribution to the EU budget.

There are good legal grounds as to why proposals for semi-detached membership could not be achieved in practice. Ideas such as a 'supremacy act' asserting the superiority of British law or giving the British courts the power to overrule judgements of the European Court of Justice undermine one of the fundamentals of the European Union – the universal application of EU law which actually needs to be strengthened in some areas to ensure that every State obeys the rules.

Without a universally applicable and enforceable body of European law, the European single market simply could not function as it does. British businesses can treat the other 14 EU member states – soon to be joined by 10 new members – as part of their 'home market' safe in the knowledge that common standards and rules apply. And of course an attempt to end the supremacy of EU law in areas where it does not suit us implies that we would be happy to see other EU countries do the same. But this would mean that areas where even anti-Europeans agree that common legal standards benefit us could also be under threat. It is a recipe for anarchy.

Throughout our eighteen years in Government, we always accepted that the European Union could not possibly work without its law taking priority over national laws within its own competence. There has never been any serious doubt that for us to purport to reverse this principle by an Act of Parliament would be fundamentally incompatible with our continued membership of the Union, and would be taken as an immediate signal of our withdrawal from full membership.

Consider the likely response of other member states to a British proposal to change completely the nature of membership of the European Union, an organisation that some of them have spent more than half a century creating. Ten new member states have just agreed to join it as it is. It is simply not credible to believe that they would agree to give Britain some kind of special status that allowed us to enjoy the rights and benefits created by EU membership without being bound by any of the responsibilities.

Many of our European partners agree with us on the urgent necessity of reform in areas such as the Common Agricultural Policy but they would not support tearing up 40 years of carefully crafted agreement. Any such change to the EU's founding treaties would require the unanimous agreement of all member states but would be unlikely to receive the agreement of any single one.

Of course, a British government insistent on pursuing this path could then use its own veto to block agreement on a draft European constitution or threaten withdrawal. Such a confrontation would either provide a terminal blow to our EU membership or end in such a humiliating u-turn by a British government as to dissolve any hopes of Britain wielding serious influence in the EU in the future. Ultimately, there is no future for Britain as a semi-detached member of the European Union – we must choose whether to be fully in or to come out altogether.

Chapter three: why withdrawal would be bad for Britain

To turn our backs on the European Union would be a disastrous course for Britain – seriously diminishing our living standards and our place *in the world*. I will take these two issues in turn.

Anti-Europeans argue that Britain's economy would not suffer from leaving the EU and we could rely on our unique relationship with America for trade and investment. The evidence is on the side of those, like me, who believe leaving the European Union would seriously damage the British economy. Just a few relevant facts demolish the anti-European argument.

Britain's trade with the European Union has grown from just over 36% of our total trade when we joined in 1973 to 55% today. This means the European Union is now overwhelmingly our largest trading partner – accounting for three times as much of our trade as the United States. It has been estimated that three and half million British jobs depend on our European trade.

The best way for Britain to *reach* the living standards of the United States is to participate in as large a single market as the US – with the opportunities for specialisation and economies of scale that entails. For Britain the only market on a large enough scale we could feasibly join is the European single market of 380 million consumers.

Outside the EU, British companies seeking to trade in Europe could face, anti-dumping duties and other protectionist measures. We might also face 'non-tariff' barriers, like incompatible technical standards or custom forms that would raise the cost of doing business in Europe and make our companies uncompetitive. The National Institute of Economic and Social Research estimates that tariff and non-tariff costs outside the single market could raise the effective price of British exports to the EU by 8.7%. Leaving the EU would clearly invoke a significant penalty in lost trade, lost prosperity and lost jobs.

Saying no to Europe would also mean a significant loss of foreign investment. It's true that Britain has other attractions to investors – our flexible workforce and the English language to name but two. But if investors locating in Britain could only serve a market of 60 million consumers and face barriers exporting to the rest of Europe our other advantages wouldn't matter a great deal.

But it's not just our economy that would suffer from withdrawal. Leaving the European Union would seriously weaken Britain's standing in the world.

Some anti-Europeans argue that outside of Europe we could make more of our "special relationship" with the US. But my experience in government tells me this is an illusion. The more influence Britain has in Brussels the more influence we have in Washington and the wider international community. I am a strong supporter of the Atlantic Alliance and I admire the United States. However I want us to be a powerful and influential ally and not a subservient satellite of the US.

The most important political lesson of recent years is that no country can any longer exercise complete sovereignty over all its own affairs, if it ever could. Economic globalisation, international terrorism and global environmental dangers all emphasise the imperative for countries to come together to deal with 21st century challenges which do not respect neat national boundaries. That is why Britain regularly signs and adheres to international treaties on such subjects - all treaties are and always have been a constraint on national sovereignty.

The collective voice of the EU is far louder than Britain's alone. When the EU sets out a common position in international trade and environmental negotiations the rest of the world takes note. That simply would not be true for Britain alone. Rejecting the EU would mean losing, not gaining, practical sovereign power. When we are debating and negotiating the new Treaty that will become the new constitution of the EU we should be striving to ensure that maximising our practical power to influence events is our main aim.

And yet some anti-Europeans here in Britain still believe we should walk out of Europe unless the negotiations on the new Treaty get rid of the supra-national personality of the Union. They would reject our key strategic alliance that sits right on our doorstep. They would risk isolation at the expense of weakening a strong economy and a strong position in the world. In my opinion they would damage and betray Britain's interests. I would argue therefore that mine is the genuinely patriotic case.

Conclusion

For Britain, the economic and political logic is clear. We should accept that it is in our interests to be a leading player in Europe and embrace that destiny rather than grudgingly accept it.

That means that we should take a constructive view of the final stages of drafting the new European Treaty seeking to emphasise the Union of Nation States model that we prefer and promoting better decision-making processes on all those subjects where British interests would benefit from it. If we continue to debate the fundamental nature of our EU membership we will undermine any British government's ability to get the best out of it. So long as other countries remain unconvinced that we are totally committed to the EU, it can only affect the degree to which they will be swayed by even very powerful arguments in ministerial councils.

I hope that we will have a mature and sensible debate on the new constitution so that we can finally settle the key issues of the nature of the European Union and our role in it once and for all. Britain can move on and take up the position as a leading nation state in Europe that is our best route to prosperity and influence in the modern world.



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