

THE EUROPEAN CONSTITUTION

**– A Political
Timebomb**

*Returning Power
to Britain, Westminster
and You*

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Summary

- At the Labour Party Conference, Tony Blair lit the fuse of a political time-bomb. He called for “*an historic realignment*” of political forces and the greatest consultation exercise in British history – but the European Constitution is at the centre of the realignment and Blair refuses a referendum on it.
- The European Constitution is a project of the EU elite, which will fundamentally change Britain’s relationship with the European Union; contrary to what the Prime Minister and Foreign Secretary say.
- It is a Constitution with a big ‘C’ – a basis for making laws – not like the constitution of a golf club, as suggested by Jack Straw. The EU already makes over 60% of the laws of the UK – under the Constitution, this would increase.
- Putting the primacy of EU law into the Constitution is not mere “*tidying up*” – it destroys the sovereignty of Parliament.
- The government’s “*red lines*” on the Constitution are very weak – and are already being surrendered.
- The government has done a U-turn on the European Charter of Fundamental Rights, a list of mainly socialist policies that is set to become enshrined in the Constitution.
- The government wants to hand over asylum policy in the Constitution – even though its demand for fundamental changes to the common policy proposals has been ignored.
- Changes to our criminal law in the Constitution are to be accepted, even though they take away rights from British citizens and have been branded “*unacceptable*”.
- The Constitution will give the EU institutions powers over British foreign policy.

- The Constitution will set up a European defence capability separate from, and rivalling, NATO.
- New Labour is in favour of the Constitution because it is a way of remodelling Britain in its own image without asking the British people. It is the most important thing on the government's agenda – as the Prime Minister has said, more important than Iraq.
- The government's constitutional reforms have been rushed in without consultation to make way for the European Constitution.
- Its aim is to pass Parliamentary powers up to the EU and to take away powers from our independent institutions.
- At the moment, the limits of EU institutions' powers are determined by the highest courts of the Member States. Under the Constitution, the European Court of Justice would have the last word.
- The alternative to the Constitution is not isolation and oblivion – it is greater prosperity, more harmonious co-operation and more freedom for the peoples of Europe.
- For the first time since 1990, the Conservative Party is united in its vision for Europe. It is our interest and our duty to pursue this vision.
- There should be a referendum on the European Constitution, with the question asked by Parliament.
- The referendum should be properly conducted, according to fair rules.
- We must act now, with a national campaign involving petitions, meetings and debates, to engage with the public and the media.
- This campaign will show that we, and the British people, have the political will to win.

A Political Time-Bomb

In his speech to the Labour Party Conference speech last week, Tony Blair lit the fuse of a political time-bomb. He said *“our aim must be an historic realignment of the political forces shaping our country and the wider world.”*

He made no reference to the European Constitution. We know, however, that he regards it as more important than Iraq, which he mentioned several times because of the troubles it has brought him.

He also promised *“the biggest policy consultation ever to have taken place in this country”*, but he refuses to consult the British people in a referendum on the Constitution when the Constitution itself is at the centre of the realignment.

The Constitution is a victory for supporters of European integration on the tired, old model of the corporatist superstate. The Convention which drafted it was an elite gathering, chaired by one of the architects of economic and monetary union, but pretended to be an exercise in democratically accountable reform. Its result was a draft *“constitutional treaty”* which proposed deepening political and economic integration, behind a mask of institutional change said to be necessary for enlargement.

Contrary to assertions by the Prime Minister and the Foreign Secretary, it would fundamentally change the nature of the relationship between the EU and its Member States, including the United Kingdom (as shown on pp. 19–20 below). It is a blueprint for the nations of Europe to be subsumed and absorbed by the European Union – something the British electorate has never wanted.

A new approach for Europe?

The Laeken Declaration of December 2001 told the Convention to come up with a new approach for Europe;

“a clear, open, effective, democratically controlled Community approach ... an approach that provides concrete results in terms of more jobs, better quality of life, less crime, decent education and better health care.”

This is what the peoples of Europe cried out for and, as the Swedish ‘No’ to the euro demonstrated, still want. Instead, they have been given more of the same – the powers of national parliaments and governments sucked

into the citadel of the unelected; and exhausted, failed socialist policies being set in stone for future generations.

The Laaken Declaration did not expressly authorise the Constitution, but it is now on its way to Parliament, and will do grave damage to us in our daily lives (see Appendix - Impact on Daily Lives).

What is a Constitution?

A constitution can be one of two things: a constitution with a small 'c' is a document that lays down the powers of an organisation, within the framework of existing law (like the constitution of a golf club). A Constitution with a big 'C' is a "*document having a special legal sanctity which sets out the framework and the principal functions of the organs of government ... and declares the principles by which those organs must operate.*"[†] The most essential question about the draft European Constitution, therefore, is whether it is a constitution with a small 'c' or a big 'C'.

Club rules?

The Foreign Secretary, Jack Straw, has compared the draft European Constitution to the constitution of a golf club. Yet even if it was just a "*tidying up exercise*", it would be far more than that, since the treaties of the EC and the EU have already created a new legal order, virtually supreme over the laws of Member States. Contrary to what Straw said in a Commons debate on 16th September this year, EU law is far more than just another branch of international law.

The long yarn of the law

When the European Communities were founded, most international lawyers took it for granted that the law of the Communities would simply be a new branch of international law. But the European Court of Justice, set up to adjudicate on the operation of the Communities, disagreed. In 1963, in the case of *Van Gend en Loos*, it said:

"...the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights".

A year later, in the case of *Costa v ENEL*, it said:

"By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply."

The governments that signed the Treaty never said that they had intended to establish "*a new legal order*", but the principle was generally accepted, with the result that new as well as existing UK statutes could be

rendered ineffective by European law (as with the Merchant Shipping Act of 1988).

A national court bites back

The primacy of European law was never fully accepted, however. The best example of the limits of the principle came in a legal challenge to Germany's ratification of the Maastricht Treaty. According to German ideas, a federation can determine the extent of its own powers without the consent of its component States. This capacity is called "*Kompetenz-Kompetenz*". In its judgement on Maastricht, the German Constitutional Court said that neither the Community as a whole, nor any of its institutions, had *Kompetenz-Kompetenz*: the capacity to determine alone the extent of its own powers. It went on to say that, under certain circumstances, judgements of the European Court of Justice would not be considered legally binding in Germany. This meant that 'Europe' was not a federation and that European law was not absolutely supreme in the eyes of the German court. Or, put more simply, European law is only supreme in Germany when German law says so. (This issue is examined in the UK context on p.. 16-17)

Onward to the European Constitution

Unhappy with the implications of the Maastricht decision in Germany, and similar decisions in other countries that have followed it, European federalists have been calling for a European Constitution for the last ten years. The draft European Constitution that the government is negotiating on states the supremacy of European law as a founding principle – and the British government agrees that that is just what it should be. If it is adopted, it will mean that the constitutional courts of the European Union's Member States no longer decide when European law is supreme, since the governments of the member states will have agreed as a matter of principle that it should be. *Kompetenz-Kompetenz* will belong to the European Court of Justice, whose judgements will always be legally binding all over the EU. Put simply, European law will always be regarded by the European Court of Justice, the institutions of the EU and European federalists as supreme throughout the European Union because the European Court of Justice says so.

Conclusion - this is a Constitution with a very big 'C'.

What About the Government's "Red Lines"?

They are already being surrendered. At first, the government tried to convince people that Britain was "*winning the arguments*" over the Constitution. When people remained unconvinced, Tony Blair started talking about "*red lines*" which would cover economic policy, tax, foreign policy, defence and other areas of vital national interest. These were to be set out in a government White Paper in September. This White Paper has now been published. It contains just two promises: that the UK's opt-out on the Schengen Agreement on border controls will be retained, and that Britain will not give up its seat on the UN Security Council. As for the rest, it promotes the Constitution as a good thing for Britain, and makes vague statements about the government's "*negotiating stance*" in the conference on the Constitution that started last week month.

Unlike the White Paper of 1967 on entry into the Common Market, in which the Lord Chancellor dealt fully with legal and constitutional implications, this flimsy White Paper wrongly asserts that there is no fundamental change under the Constitution between the EU and the Member States. It is on the basis of this false assertion that the government refuses to hold a referendum on the Constitution – yet it is in principle (although not in practice) prepared to hold one on the euro, which is at the centre of gravity of the Constitution itself.

Having a beano

The government has already given in on most of its objections to the Constitution. Out of over 200 amendments tabled by the government, only 11 have been accepted. Less than three years ago, when the government agreed the European Charter of Fundamental Rights, Keith Vaz, then Minister for Europe, said that the Charter would be "*no more legally binding than the Beano or the Sun*". The government was still saying that during the Convention, but now it says it will make a final decision on the Charter "*only in the light of the overall picture...*" – in other

words, it is poised to agree to it becoming enshrined as Part II of the Constitution, as it is in the draft. The Charter is an instrument for expanding largely socialist principles such as the right to strike, which has never been the law of the UK, even under the most extreme socialist government.

Seeking asylum?

Likewise, one of the government's most important draft amendments to the Constitution was on asylum. In explaining it, UK Parliamentary representative Peter Hain said:

“This is a fundamentally important amendment. [The articles as currently drafted] do not cover at all the absolutely vital external dimension to asylum. The European Union will only succeed in creating a common policy on asylum if it is prepared to act in relation to countries and regions of origin and transit. Second, the Tampere conclusions [from a previous EU policy brainstorming session] nowhere said that the second stage of work on a common system should consist of converting the minimum standards under negotiation as part of the first stage into common rules. The Treaty should therefore not contain a catalogue of measures to be taken, but should establish a more general legal base...”

These objections have been ignored. The government was clearly unhappy with the common asylum policy in the Constitution, but is letting the matter go because it is so eager to get asylum, which it has handled so incompetently, off its hands.

This is totally irresponsible. The government is now preparing to adopt an approach that it fundamentally objects to. What's more, it is giving away control of a policy area that the public considers highly important. As a result, this aspect of the Constitution threatens the good relations that ethnic minority groups have enjoyed in Britain.

It's criminal

Another surrender has been on criminal law. During the Convention, British and Irish representatives complained that the special nature of the British Isles' "common law" legal systems was being ignored by representatives from other countries. Examining the proposals on criminal law in the draft Constitution, the House of Commons European Scrutiny

Committee (chaired by a Labour MP) concluded that they were “*unacceptable*”, and should not be agreed to by the British government.

The government, however, was too heavily involved in creating these proposals to accept this criticism. Its big idea was “*mutual recognition*” of decisions by courts in the EU, a principle which accepts that all judgements, from anywhere in the EU, are equally valid. Several recent cases have demonstrated that in some EU Member States, the accused do not have access to proper advice and can be prevented from conducting an effective defence. The government is ignoring these kind of risks to British citizens. It says in the White Paper that the government will obtain “*minimum standards at EU level*” in the Constitution, but these are minimum standards of protection for British citizens accused of crimes – in other words, there will be fewer rights for the accused than they now have under our criminal justice system.

We have already had some strong indications of this with the European Arrest Warrant and the troubles of the Greek plane-spotters.

Defending the indefensible

The most shocking government sell-out so far has been on defence. Tony Blair has repeated his commitment to NATO many times, and insists that he sees the UK as a bridge between Europe and America. Yet over the weekend of 20th–21st September, he gave in to plans for an autonomous defence capability for the EU – effectively a European army, under separate command from NATO. He had already agreed to a European arms procurement agency – a body designed to grow into the role of formulating a single European defence policy and designing a common European defence system. (It has even been suggested that any government of an EU Member State that buys weapons from the USA should be fined for doing so). The government has also dropped its objection to the Constitution giving the European Court of Justice powers to “*monitor*” Member States, to ensure that they;

“actively and unreservedly support the Union’s common foreign and security policy in a spirit of loyalty and mutual solidarity... Member States shall ensure that their national policies conform to the positions of the Union.”

Why Would Tony Blair do this?

During the Convention on the Future of Europe, which drafted the Constitution, Peter Hain (now Leader of the House of Commons) tabled over 200 amendments to the draft – a mere 11 of these have now been accepted. As David Heathcoat-Amory observed at the time, the government was doing nothing like enough to protect British national interests.

Amendments “fiddly” says Liddle

One reaction to Hain’s suggestions came from Roger Liddle, Tony Blair’s senior policy advisor on Europe. In a letter to members of the Cabinet, he wondered why the government had asked for all these “*fiddly amendments suggesting we have fundamental differences with these proposals, when we have not*”. In Liddle’s view, the existing proposals “*give us most of what we want.*”

The reason is that the government needed to be seen to be doing something to stand up for British interests. Most of the amendments were indeed just nitpicking, or involved taking out phrases like “*on a federal basis*”, which the government was afraid might give the game away. Nothing substantial was adopted from them. Why then is the government so keen on the draft European Constitution, and why is it so strongly opposed to letting the people have their say?

Unpicking the tapestry

The answer is at the heart of what ‘New Labour’ is all about. The Labour Party has learned that it cannot re-invent Britain by nationalising British industry, abolishing grammar schools and taxing the rich until the pips squeak. ‘New Britain’ can only be realised by tearing apart the fabric of the British state – its Constitution. This is the task of the new Department for Constitutional Affairs – tearing up our Constitution and downgrading our Parliament.

Parliament needs to be reformed and strengthened, not downgraded and undermined. When Tony Blair speaks of “*an historic realignment*”,

what he really means is that our Parliament at Westminster, for generations the heart of global freedom and democracy, is to be made irrelevant.

It's no coincidence that the government this year jumped into reform of the judicial system without consultation, continued setting up regional assemblies that no one wants and started the second phase of reform of the House of Lords on a basis opposed by members of all political parties: There will now be no Lord Chancellor to represent the informed and independent views of our judges, and the Prime Minister has reneged on the Parliamentary agreement on the House of Lords. He is not so much abolishing the hereditary peers as reducing the number of those who would support a referendum amendment to the Constitutional Bill.

The British Constitution is being redesigned within the framework of a greater European Constitution. That is why these changes are being made without consultation – because the government already knows what it wants to do: give away Parliamentary powers to the EU and take away power from our independent institutions.

As Peter Mandelson says on his website, New Labour wants;

“the long-term transformation of Britain into a modern ... social democratic European country”.

Or as Tony Blair put it in his Warsaw speech of 30th May, what he is after is;

“... the prize of being part of ... a powerful political union.”

Peter Hain has said that Tony Blair told the Cabinet that the Constitution was even more important than Iraq, and even in Prime Minister's Questions he admitted that;

“the outcome of the Constitution ... is fundamental.”

However, at the centre of the government's argument against a referendum is the assertion that the European Constitution will make no fundamental change to the relationship between the EU and its Member States, including the UK. This is simply wrong. In particular, it is wrong because the Constitution would create a new political and constitutional order, adjudicated on by the European Court of Justice (as explained in the legal analysis on pp. 16–20 below). Why would they want a Constitution, if not to achieve fundamental change? Everyone else in Europe, from Prodi to Giscard d'Estaing, knows and states that this is what it is all about.

Got the vote?

The full implications of this simultaneous continentalisation and turning back the clock towards a decaying social model are something the British electorate would never vote for. But the European Constitution gives New Labour the chance to impose them without asking the people. It has been presented as a mere “*tidying-up exercise*”, essential to maintaining “*British influence*”, and will be forced through the House of Commons on a three-line whip. The Lords had suggested that they might introduce an amendment for a referendum on it, but now that they are being “*reformed*”, some of the most independent-minded peers will be replaced with yet more of Tony’s cronies. It is clear from Lord Falconer’s speech to the House of Lords that only a limited number of life peerages will be distributed to those peers who are on their way out.

Tony Blair says that if the government were to hold a referendum on the European Constitution, it would win, so holding one would be a waste of time. He knows that this is not true. He could be honest and try to convince people that more European integration on the old, redundant model of the corporatist state was a good idea; but he has not been able to convince them on the euro, and now that he has lost public trust, he would be sure to lose.

Destiny’s child?

Blair has said that joining the euro is Britain’s “*manifold destiny*” – in other words, it is obvious to him that it is inevitable. And once the European Constitution was adopted, the euro might seem inevitable to the British people, too. Of course, in a democracy, nothing is inevitable unless people vote for it, but the European Constitution was not in the Labour manifesto at the last election, and the government does not want to give the people a referendum on it. That is the kind of democracy we live in under New Labour.

We can still govern ourselves - provided we use our political will

There has been much disinformation about the legal and constitutional position of the UK Parliament in relation to the European Union. There has been a great shift away from self-government, but this can be retrieved if it is done responsibly, clearly, and unambiguously, and with political will. The first step is to vote against the Bill. Opposing the adoption of the European Constitution, as Ian Duncan Smith said in his Prague speech in July, is “*a matter of principle*”. The next step is to get a referendum amendment to the European Constitutional Bill – which must be wide enough in its Long Title to accommodate such an amendment. After that, we must get a ‘No’ vote in the referendum. Then we must win the general election and get down to negotiations. As Iain Duncan Smith also stated in Prague, “*the European Union can only prosper as an alliance of sovereign democracies.*”

Since there is in practice no longer a Lord Chancellor who can give objective, legal analysis, here are some of the legal and constitutional questions – and answers:

1 Can the UK Parliament:

(a) amend or repeal existing enactments (Acts and statutory instruments) derived from EU law and subsequent to the European Communities Act 1972:

- (i) as respects UK law?**
- (ii) as respects Community law?**

(b) legislate otherwise inconsistently with Community law?

In *Macarthy's Ltd v Smith*¹, Lord Denning said:

“If the time should come when our Parliament deliberately passes an Act with the intention of repudiating the Treaty or any provision in it or of intentionally acting inconsistently with it and says so in express terms then I should have thought that it would be the duty of our courts to follow the statute of our Parliament.”

There has not been a single subsequent statement by a British court to suggest that Parliament could not legislate contrary to Community law if it expressed itself in clear and unambiguous terms. As Lord Justice Laws said recently in the ‘Metric Martyrs’ case:

“...there is nothing in the [European Communities Act] which allows the [European Court], or any other institution of the EU, to touch or qualify the conditions of Parliament’s legislative supremacy in the United Kingdom... That being so, the legislative and judicial institutions of the EU cannot intrude upon those conditions.”²

Ratification of the European Constitution would amount to such an abdication that judges might, in future, seek to take a very different view.

2 If so,

- (a) how do we proceed?**
- (b) with what effect**
 - (i) in UK law?**
 - (ii) in Community law?**

The UK Parliament would have to legislate in a way expressly contrary to the offending instrument, i.e. by express repeal (so as to remove the assumption employed by the House of Lords in *Factortame (No. 2)*³ that Parliament would not mean to legislate contrary to Community law).

In the event of this occurring, it is likely that the UK courts would regard the law as changed by an Act of Parliament, and act accordingly. The European Court of Justice, meanwhile, would look to the effect of the legislation. If it abrogated a Regulation or defeated the purpose of a Directive, then it would be regarded as being without effect in Community law. Under our constitution at present, therefore, the issue is one of political will, woven into the making of our laws by our Parliament.

3 Can the UK Parliament amend or repeal the Human Rights Act 1998 and the European Convention on Human Rights?

Yes. The Human Rights Act could be repealed by statute, whereas the Convention itself⁴ could be abrogated by prerogative. Alternatively, the 1966 Declaration made to the Secretary General of the Council of Europe, recognising the competence of the European Commission of Human Rights to receive individual petitions and recognising as compulsory the jurisdiction of the Strasbourg Court,⁵ could be reversed by making a subsequent counter-declaration, leaving the Convention with the status of ordinary international law in the UK. The Act does not even need to be amended for Parliament to legislate inconsistently with it

as things stand. Parliament may over-ride the Convention provided it does so in clear and unambiguous terms.⁶

4 Can the UK, via prerogative or via legislation in the UK Parliament, abrogate EC/EU treaties not yet implemented into UK law or treaties entered into by the EC/EU; and is the Foreign Secretary correct in saying that treaties have primacy over national laws?⁷

As a residual power of the Crown, the prerogative cannot be used to frustrate an Act of Parliament. Consequently, the abrogation of EC/EU treaties not yet implemented into UK law and of treaties entered into by the EC/EU would require an express derogation from the European Communities Act 1972 s2(1), enacted by Parliament.

No, the Foreign Secretary is not correct – and it was an astonishing thing for him to say. Indeed, *“if the terms of [subsequent domestic] legislation are clear and unambiguous, they must be given effect to whether or not they carry out Her Majesty’s treaty obligations, for the sovereign power of the Queen in Parliament extends to breaking treaties...”*⁸ (When the Foreign Secretary made his remark, Richard Shepherd, MP, and I pointed out that there would be no point in passing statutes to implement Community obligations if his statement was correct – his remarks take us back to the Seventeenth Century!)

5 Who is the final court for 1 to 4 and how are its judgements enforced?

The final court for matters concerning the powers of Parliament is the Judicial Committee of the House of Lords.

Under the Rules of the Supreme Court, Order 32, rule 10, Orders of the House of Lords on appeal from the Supreme Court of England and Wales are enforced by making them Orders of the Supreme Court, whereupon they are governed by the Civil Procedure Rules, in the same way as the judgements of lesser courts than the House of Lords.

6 What amendments would be needed to the European Constitutional Bill to reaffirm the sovereignty and supremacy of the UK Parliament?

It would be possible to reaffirm the sovereignty of the UK Parliament by amending the Bill along the following lines:

(a) *Notwithstanding anything in this Act or in the European Communities Act 1972, or any Act amending that Act, European Community/Union treaties, laws and obligations shall be binding upon the courts of the United Kingdom only and insofar as provided by enactment, including any future enactment, of the UK Parliament.*

(b) *“This Act shall not affect the application of the Rule of Recognition (lex posterior derogat legi posteriori), such being a fundamental principle of the Constitution of the United Kingdom, in the courts of the United Kingdom.”*

7 Would this have legal effect as respects European law or only UK law?

The amendments to the European Constitutional Bill proposed above would have the effect of creating a jurisdictional conflict, as the UK Courts would be expressly reminded to recognise a different supreme authority from the European Court of Justice. The UK courts would thus be obliged to disapply provisions of European law which conflicted with subsequent UK statutes that were drafted in terms which clearly and unambiguously created a conflict. This situation would preserve the sovereignty of the UK Parliament as it now stands.

8 Would the incorporation of the EU Constitution into UK law by Act of Parliament create a superior constitutional order to the UK Parliament and would that Act be adjudicated ultimately by a Supreme Court of Europe?

The essence of the European Constitution is its political resolution of the “*Decisive Question*”⁹ of who is to determine the limits of European Court of Justice jurisdiction. This question has been open since the Maastricht Decision of the German Federal Constitutional Court in 1993,¹⁰ (since echoed by the Italian and Danish constitutional courts¹¹) in which that court asserted that judicial *Kompetenz-Kompetenz* resided with it and not with the European Court of Justice (see **What is a Constitution?** above).

The European Constitution is designed as an *ex post facto* seal by Member States on the constitutionalism of the European project. Its codification of the principle of the supremacy of Union law would answer the ‘Decisive Question’ as follows: “*the limits of the jurisdiction of the*

European Court of Justice are defined by the European Court of Justice.” The European Court of Justice would then effectively be a Supreme Court of Europe – and a law unto itself. Together with legal personality for the Union, this would turn the Union from a creature of the member states into their master. As stated on page(4)..., this would fundamentally alter the relationship between the EU and its Member States, contrary to the assertions of the Prime Minister and the Foreign Secretary, and the White Paper on the European Constitution.

Once the European Court of Justice has *Kompetenz-Kompetenz*, it will be able to arbitrate on any conflicts it thinks exist between the Member States’ Constitutions and European law. The European Constitution Act would fall within the jurisdiction claimed by the European Court of Justice. The UK Government’s amendments to the existing draft do not insist that the Member States will retain ultimate sovereignty after the Constitution is ratified by all the Member States – hence the need for amendments to the European Constitutional Bill (see 6 above) to preserve the sovereignty of the UK and its parliament.

(It may be noted that the government, despite its attempts to smear the Conservative Party as seeking withdrawal from the EU, has itself connived at a withdrawal provision within the Constitution itself, and has thereby tried to close the door on future bilateral negotiations.)

9 What else could be done to safeguard the UK and its Parliament?

Parliament could reject the European Constitutional Bill. The Bill, and any amendments to it, should be subjected to a free vote. If the Bill itself is not rejected, a referendum amendment could be inserted into it. Such an amendment would stipulate the wording of the question and lay down the procedures to be followed in a referendum.

Any new Treaty amendments can be tabled and, of course, vetoed under present EU arrangements. But to say that because Treaty amendments can be vetoed this somehow makes negotiations impossible is to ignore political will. Margaret Thatcher obtained the rebate and Harold Wilson renegotiated the Treaties. Negotiation does not mean withdrawal.

A referendum amendment could be inserted into the European Constitution Bill, and could lay down the nature and procedures of the referendum.

There is an Alternative to the Way Things are Going

The government has been telling people that they must be either in or out of Europe – being in is a blessing; being out is a curse. But Britain, Denmark and Sweden have not suffered from remaining outside the euro – they have benefited, whilst Norway and Switzerland have enjoyed the benefits of the Single Market without being members of the EU.

The end of the beginning or the beginning of the end?

The expansion of the European Union, taking in former communist states, is an opportunity for a fresh start. It is planned that the European Constitution should replace all the existing treaties of the EU, for the first time in the history of the European project. This is not the moment to set in stone redundant policies from the Cold War, but for reflection and reappraisal in the light of the new, free Europe – a New Europe of democracies, as Iain Duncan Smith stated in his Prague speech in July, – and to revise the unwanted directives and regulations from the old system.

As I set out in my European Foundation pamphlet *Associated, not Absorbed*, in 2000, this can be achieved by the European Union having two different spheres: Sphere 1 for European trade and association, and Sphere 2 for integrated European government. Sphere 1 would be based on a narrow set of rules created and applied through the Member States' governments. Members of Sphere 1 would only be subject to those parts of European law (or the '*aquis communautaire*') compatible with trade and environment policy, as agreed by the members' Governments, and they would give up their voting rights on all other business. They would also be free to conclude trade agreements (for example with the North American Free Trade Association) in the absence of action by the European Union as a whole.

This model would get rid of the political pressures and ill-feeling that

surrounds the existing unitary system with “*enhanced co-operation*” and opt-outs, and would give individual Member States greater autonomy within the framework of the European Union. It would also stop the proliferation of regulatory agencies like the corruption-riddled Eurostat, which are unaccountable, undemocratic and out of control.

Treaties may be subjected to renegotiation – indeed, all the European treaties, except the founding Treaty of Rome have been renegotiations of previous treaties. This Constitution, however, is intended not to be renegotiable. It has a so-called “*flexibility clause*” (a serious misnomer, but then the European Commission has said that economic and monetary union, an irrevocable step accompanied by the strait-jacket of the “*growth and stability*” pact, is “*the best form of flexibility yet devised*”!) This “*flexibility clause*” enables the EU to take more powers without negotiations. It replaces the existing Article 308, but extends its application from the operation of a single market to everything in the Constitution.

As Tony Blair says, the Constitution is intended to determine Britain’s relationship with the EU “*for generations*”. It will be here to stay and nothing could be more fundamental.

All shall have prizes

If it became a member of Sphere 1, Britain would get back all its powers in the field of European government, and reclaim its powers over significant areas of policy like agriculture, fisheries and foreign aid, as well as other matters to be negotiated. We could finally set about a real process of deregulation, as well as enjoying greater possibilities for free trade, whilst we would pay far less into the EU budget. And all this would come on top of the continuing benefits of a reformed Single Market.

If the new Member States joined Sphere 1, they would not risk being overwhelmed by laws and regulations, and would be able to continue building dynamic, enterprise-based economies, as they have done since the fall of the Soviet Union. At the moment, they are being bullied into accepting the draft European Constitution by the big countries: France and Germany (the engine of old-style integration), Italy (which wants the Constitution to become a new ‘Treaty of Rome’ under its presidency of the EU) and, shamefully, Britain, whose Prime Minister will do anything to make him look like he is running the show.

The countries of the eurozone, meanwhile, could be members of Sphere 2, where they, and any other member state that wished to in the future, could continue to integrate without being held back by reluctant partners.

You are free, therefore choose

It is likely that Sphere 1 would be more attractive to the British people, and to the peoples of many existing and new Member States, than the draft European Constitution that is now on the negotiating table. This should not be taken for granted, however. To test popular approval for it in the UK, there should be a national referendum, followed by a free vote on all stages of the Bill in both Houses of Parliament. Sphere 1 might in future change shape, or receive extra powers from its Member States, but this would be the result of a democratic process in each member state – not the ambitions of remote bureaucrats. Also, any powers that were given away should be capable of being returned.

A ‘No’ to the European Constitution is not a ‘No’ to Europe. The present Treaties are clear that they can only be changed with the agreement of all the Member States – there is no prospect of Britain being “*expelled*” for vetoing the Constitution. To do so would not be to retreat to the margins, as Blair suggests, but to lead from the front.

An article in *The Economist* on 3rd July stated that a position in favour of the UK belonging to Sphere 1 of the EU, as described in my pamphlet, *Associated, not Absorbed (2000)*, could win the Conservatives an extra 8% of the vote in a general election. If this is to happen, the European Constitution must first be stopped. It could be stopped by a British referendum authorised by the UK Parliament. It is a fundamental of the British Constitution that Parliament can do anything except make laws that bind future Parliaments. For Tony Blair to bind Parliament within a self-defining European Constitution, adjudicated by a Supreme Court of Europe, without even consulting the British people who would have to live with the consequences, would be unforgivable.

Europe and the Conservative Party

Conservatives' scepticism about the European project emerged in the late 1980s as a response to Jaques Santer's demands for "*European government*". It grew as the full implications of European integration, in terms of judicial activism, over-regulation and lack of democracy (not to mention corruption and fraud) became clear.

United we stand

Now that we have the draft European Constitution, the full implications of the European project, as originally conceived, have been made clear. Iain Duncan Smith's Prague Speech of 10th July encompassed this, and set out the Conservative vision for New Europe of democracies.

At this year's European Foundation meeting at the Party conference, which took place on the 10th anniversary of the meeting at which the European Foundation was established, at the same Ruskin Hotel in Blackpool, Michael Ancram, Stephen Dorrell and I demonstrated for the first time since 1990 that the Conservative Party stands united on the European issue. We can now go forward on the basis of our positive, shared vision, drawing back voters who previously voted for UKIP and those who did not vote for us because of the European issue either way. Furthermore, voter turnout having dropped disastrously to 59% at the last general election, there is now a great opportunity to reverse this by giving back to people a belief that politics, politicians and government, particularly on the European issue, can be trusted.

There is no doubt about the relevance and impact of the European issue and the Constitution on people's daily lives – the problem is that it has not been fully and graphically explained. The issue has generally been ducked. In particular, many Labour voters would vote with us if they knew what impact it was having on health, education, pensions and their traditional concerns. The same applies to the elderly. Blair's betrayal of the British people, by refusing to give them a referendum, proves that he will not trust the British people. We trust the people, and we must restore their trust in us.

A Referendum on the European Constitution

The first task for Conservatives in realising their vision of a New Europe of democracies is to secure a referendum on the Constitution. This is already certain to happen in Ireland, Denmark, Portugal, the Netherlands and Spain; and many other EU Member States are likely to follow suit. The European Parliament has declared itself in favour of national referendums. The British public is overwhelmingly in favour of a referendum, and canvassing for one in the constituencies would find a ready response.

The referendum would have to be conducted in the right way, probably with both sides' arguments arbitrated by the Electoral Commission and with proper controls to prevent the use of government and EU propaganda money. There must be no devious slant to the question asked. The rules on advertising must not be bent and the referendum question should be put to the people and voted on in Parliament in a free vote.

A referendum on the European Constitution would be the right place to start the process of de-centralisation – where people want it. The electorate is fed up with the top-down politics that tells them what they are getting and says they are not being sensible if they disagree. People want to have a voice on the issues that are important to them, and they want it to be heard. The government's invitation for people to have their say online (which at the time of going to press has had fewer than 1,000 contributions) is a parody of the consultative process and an insult to British democracy. As Stephen Dorrell said in the Commons on 16th September;

“Surely if we are to continue to develop Britain's role as an active member of the European Union we need to re-engage the public in the form of European Union that we want to create.”

The way to do this, as he rightly says, is in a referendum.

The Conservative Campaign

The Conservative campaign is about obtaining a referendum and a 'No' vote as we prepare for political power. We are in the serious business of targeting Labour and Liberal Democrat MPs, particularly in marginal seats, but also elsewhere.

We are organising now and campaigning to force Tony Blair to hold a referendum on the European Constitution through a referendum amendment to the Constitutional Bill in the House of Commons and the House of Lords. We will of course be opposing the European Constitutional Bill in principle.

Why?

In as little as nine months, it will be too late – the European Constitutional Bill will be driven by a programme motion and a three-line whip unless, as we demand, there is a free vote.

As a future government, the Conservatives must lead the arguments and policies against adoption of the Constitution. This is right for the Party, right for the national interest and right in principle. People must be made aware of the dangers the European Constitution poses to them in their daily lives.

As regards a referendum amendment in the House of Lords, Tony Blair is reneging on a Parliamentary agreement on the hereditaries – they will not all be given life peerages and this will decimate support for a referendum amendment. The Liberal Democrats will almost certainly want the Constitution (and the euro) more than they want a referendum – for all their protestations to the contrary.

Tony Blair is already in trouble – if the political will against the Constitution is mobilised, his arrogance towards the British people will make him even more unpopular and distrusted. Everything he said at the Labour Party Conference about public services and government spending on health, education, transport and pensions will be constrained by

his agreement to European economic management under the Constitution. This will gravely affect the daily lives of every man, woman and child in the country, as the misnamed “*growth and stability pact*” and the euro already have in France and Germany. Indeed, the only escape route he will have is to raise taxes – and note that the Constitution’s financial provisions say also says that the Union will provide itself with the means necessary to achieve its objectives. “*Means*” is a euphemism for tax.

Blair says he has no fear of Britain losing the ability to hold its own – this defies belief when he is surrendering so many powers in principle, and many more under qualified majority voting. He also promised the greatest consultation exercise in British history, yet he refuses to consult the people on the thing that affects them most of all – their future government. The truth, as Michael Ancram remarked in the Commons on 16th September, is that;

“The government’s ruling out of a referendum on the ... Constitution displays a ... hectoring disregard for the deeply held views of the British people.”

How?

The campaign will not be expensive, but it will take effort. We will show the effects of the European Constitution on the daily lives of voters and on the national interest as a whole. We will show why on this, as on everything else, Tony Blair cannot be trusted, but will claim victory even as he is selling Britain down the river.

There will be public petitions to Parliament, calling for a referendum, constituency by constituency. These will be presented by Conservative MPs, but other MPs’ constituents and the media will insist that Labour and Liberal Democrat MPs present the petitions handed to them as well. The whole process will be accompanied by local press releases, flowing in a steady stream before the Constitutional Bill is set in stone. Apart from the Prime Minister’s current refusal to hold a referendum on the Constitution, there is no reason why the Bill should not be introduced with a referendum built into it. Much depends therefore on the pressure exerted, in particular on the marginal seats, as the MPs see their majorities dwarfed by the number of signatures on the petition in their constituency.

There will also be local, regional and national public meetings and open debates with local and national politicians, businessmen and celebrities, engaging the public and media, and constantly generating interest in this great issue for our nation.

Notes

- † A.W. Bradley and K.D. Ewing, *Constitutional and Administrative Law*, 2003.
- 1 [1979] 3 All ER 325 at 329.
- 2 *Thoburn v Sunderland City Council* [2002] EWHC 195 ADMIN.
- 3 *R v Secretary of State for Transport, ex parte Factortame (No. 2)* [1991] 1 AC 603.
- 4 (brought into force by Command Paper 8969 of 1953).
- 5 Command Paper 2894 of 1966.
- 6 See Lord Hoffman in *R v Secretary of State for the Home Department, ex parte Simms & O'Brien* [1999] 3 WLR 328.
- 7 Hansard, 16th September 2003, Column 794. Mr Straw invoked the case of *R v Immigration Appeal Tribunal, ex parte Shah* [1999] 2 AC 629 in support of this statement, although in that case, the Judicial Committee of the House of Lords had regard to the UN Convention Relating to the Status of Refugees, 1951 only because it was incorporated into UK law by Act of Parliament.
- 8 per Diplock LJ in *Salomon v Commissioners of Customs and Excise* [1967] 2 QB 116, and see Lord Hoffman in *Simms & O'Brien*.
- 9 See Theodor Schilling, "The Autonomy of the Community Legal Order – An Analysis of Possible Foundations", *Harvard International Law Journal* 37 (1996), 389.
- 10 German Constitutional Court, Judgement of 12th October 1993, 89 BverfGE. 155; English translation in ILM 33 (1994), 388.
- 11 See Devuyst "The European Union at the Crossroads", 2003.

Conclusion

This pamphlet has set out many of the problems that face us under the European Constitution and provides many of the answers. There is much work to be done, but the ultimate test will be that of the political will of the British people. This Constitution affects every person in the country, and in Europe. It cannot be otherwise when over 60% of our laws are already made by the EU, whilst the system of majority voting is about to be expanded through the field of European government.

There is no nook or cranny in our system of government which will remain unaffected by this Constitution. It is an outrageous falsehood to suggest that it will not fundamentally change Britain's relationship with the EU, or indeed our Constitution, our Parliament, and the way we are governed in our daily lives.

The arguments in this pamphlet do not necessitate withdrawal from the EU. Indeed it is the government which has connived at the express facility to withdraw which, with its agreement, forms part of the draft Constitution. The real issue is how to make the EU and its Member States more democratic. As Iain Duncan Smith spelled out in his Prague speech, we need "*a New Europe of democracies*". This means preserving the UK as a nation-state. The European Constitution has gone in completely the wrong direction and we reject it as a matter of principle.

The time has come for a massive campaign for a referendum, and once that referendum has been obtained, to save our nation with a resounding 'No' vote.

Appendix

– Impact on Daily Lives

The Constitution says ... Its direct impact on you

Article 1(1) “Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union...”

No referendum equals no will of citizens – you are ignored.

Article 2 “The Union is founded on ... respect for ... democracy...”

Undemocratic – EU more remote.

Article 3(1) “The Union’s aim is to promote peace, its values and the well-being of its peoples.”

Consider Iraq. Member States have different values. Since 1945, peace has come from NATO, not the EU.

Article 3(3) “The Union shall work for the sustainable development of Europe based on balanced growth, a social market economy ... and with a high level of protection and improvement of the quality of the environment.”

A “social market economy” equals low growth and high unemployment.

Article 9(3) “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the intended action cannot be achieved by Member States ... but can rather ... be better achieved at Union level.

The EU calls the tune and subsidiarity has never worked.

The Constitution says ...

Article 10 “1. The Constitution, and law adopted by the Union’s Institutions... shall have primacy over the law of the Member States. 2. Member States shall take all appropriate measures ... to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions’ acts.”

Article 11(3) “The Union shall have competence to ... coordinate the economic and employment policies of the Member States.”

Article 11(4) “The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.”

Article 12(1) “The Union shall have exclusive competence ... in the following areas: ... common commercial policy, customs union, the conservation of marine biological resources under the common fisheries policy”

Article 12(2) “The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable it to exercise its internal competence, or affects an internal Union act.”

Its direct impact on you

The Union will be Master. General election manifestos and freedom and choice of voters will be overridden.

French and German unemployment and low growth come from economic and employment coordination. Blair cannot meet challenges on health, education, pensions, transport and public services – stability and growth pact a dead letter.

Foreign policy and defence govern our relations with the world and NATO – all undermined. NATO guarantees our independence – the European Constitution would end it.

Control over commercial policy, customs union and fisheries policy will be locked into the Union.

Together with legal personality, the Union would take away most treaty making powers, and foreign policy undermined.

The Constitution says ...

Article 13(2) “Shared competence applies in the following principal areas: internal market, area of freedom, security and justice, agriculture ... transport ... energy, social policy ... economic, social and territorial cohesion, environment, consumer protection, common safety concerns in public health...”

Article 16(2) “The areas for supporting, coordinating or complimentary action shall be, at European level: industry...health, education, vocational training, youth and sport, culture, civil protection.”

Article 17(1) “If action by the Union should prove necessary ... to attain one of the objectives set by the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers ... shall take the appropriate measures.”

Article 31(1) “The European Parliament, the Council of Ministers and the Commission shall be assisted by a Committee of the Regions and an Economic and Social Committee, exercising advisory functions.”

Article 43(1) “... Enhanced cooperation shall aim to further the objectives of the Union...and reinforce its integration process. Such cooperation shall be open to all Member States ... at any time”

Its direct impact on you

In the internal market, justice and home affairs, agriculture, transport, energy, social policy, environment policy and consumer protection etc. etc., national governments would only be able to do what the EU decided not to. Energy policy, including guaranteeing “security of energy supplies” to the EU would be a new power. Vast range of activity handed over.

The EU would interfere by directing policy over British industry, health, education, sport and culture and civil protection (terrorist measures).

EU will do whatever it wants to achieve its aims, with common action.

The Committee of the Regions, with regional assemblies, will undermine your local government in counties, towns and parishes. The Economic and Social Committee will undermine national trade unions.

Inner core will drive other Member States to deeper integration in red line areas including defence, tax etc..

The Constitution says ...

Article 46(2) “The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.”

Article 52 “1. All items of Union revenue and expenditure shall be included in estimates drawn up for each financial year and shall be shown in the budget...
2. The revenue and expenditure shown in the budget shall be in balance.”

Article 53(1) “The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.”

Article II-11(1) “Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

Article II-12(2) “Political parties at Union level contribute to expressing the political will of the citizens of the Union.”

Article II-18 “The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention...”

Its direct impact on you

The Union will primarily listen to multinational trade associations, at the expense of small business.

The EU budget has not been signed off for many years. “A massive enterprise of looting” from it. Much spending is not on the balance sheet.

This will lead to European tax by the back door.

The right is not absolute – must be balanced by duties and responsibilities.

European political parties moving to state funding – marginalizing national political parties.

Common asylum policy goes beyond Geneva Convention, leading to a huge increase in asylum applications - the British government would be powerless.

The Constitution says ... Its direct impact on you

Article II-23 "... The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex."

This underwrites political correctness in employment.

Article II-28 "Workers and employers, or their respective organisations ... have the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action."

The right to strike would reverse British labour reforms that have made us competitive. This right never accepted before by any Labour government. The Charter of Fundamental Rights would also forcibly restrict working hours.

Article III-171(1) "... European laws ... shall establish measures to: (a) establish rules and procedures to ensure the recognition throughout the Union of all forms of judgements..."

This would prevent any judgement from the courts or authorities of another EU Member State from being challenged in the UK courts – with grave consequences for individuals, business and our legal system.

Article III-172(1) "European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions..."

The EU will define certain criminal offences – and set minimum sentences for those found guilty of them, overriding our criminal laws and sentencing policies.

Article III-175(1) "In order to combat serious crime having a cross-border dimension, as well as crimes affecting the interests of the Union, a European Law ... may establish a European Public Prosecutor's Office."

Proposals for a European Public Prosecutor have been condemned by the House of Commons Scrutiny Committee as threatening an "engine of oppression".

The Constitution says ...

Article III-194(1) “... the European Council shall identify the strategic interests and objectives of the Union.”

Article III-195 “1. ... the Union shall define and implement a common foreign and security policy... 2. The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity... They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. The Council of Ministers and the Union Minister for Foreign Affairs shall ensure that these principles are complied with.”

Article III-206(2) “... Member States which are also members of the United Nations Security Council will ... defend the positions and the interests of the Union... When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the Union Minister for Foreign Affairs be asked to present the Union’s position.”

Its direct impact on you

This puts the national interest at risk where we disagree with EU.

This obligation of loyalty as defined and implemented would subordinate our national interest in matters of foreign policy and defence.

Despite denials by the government, Britain would be on the UN Security Council primarily to represent the EU.

The Constitution says ...

Article III-212(1) “The European Armaments, Research and Military Capabilities Agency ... shall have as its task to: (a) contribute to identifying the Member States’ military capability objectives and evaluating observance of the capability commitments given by the Member States; (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;”

The Protocol on the Role of National Parliaments in the European Union states that it aims to “encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals...”

The Constitution will make Qualified Majority Voting the general rule in EU legislation.

All agreements between EU Member States that are not in the Constitution will have to be renegotiated.

Repeal of existing treaties and re-application of laws.

Its direct impact on you

This bureaucratic gobbledegook means that an EU weapons institute would decide the shape of our armed forces and tailor them to a European army.

In practice, the national Parliaments, including Westminster, will be made second-class. Nothing will enable them to veto proposals where there is Qualified Majority Voting.

Over 60% of new legislation in Britain comes from the EU. The veto has been largely abolished, which is very damaging to our influence and to business.

The British rebate, negotiated by Margaret Thatcher so that the UK didn’t pay so much into the EU, will be lost. The British taxpayer will be paying more and getting less.

New constitutional wording will create confusion. Unless we assert our Parliamentary supremacy and negotiate accordingly, we would not change laws such as the European Arrest Warrant, the Working Time Directive and a host of other laws which are harmful and restrictive to individuals and businesses.