

## THE FAILURE OF EUROPEAN CONSTITUTION

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### Abstract

The debate about the failure of the European Constitution has tended to polarize many scholars regarding the reasons why the European Constitution failed. However, having looked backwards into history in order to receive a more general overview a remaining puzzle is still there. In constitutional scholarship many efforts have been spent in trying to detach the concept of constitution from the nation-state framework and put it into a transnational concept even though in legal and political rhetoric the constitution appears to be linked with the nation-state only. The process in establishing a constitution for Europe encountered a debacle when the Netherlands and France refused the proposal.

Scholars have debated this issue more than enough but still many questions remain unanswered regarding the failure of the European Constitution. From the documents and articles consulted no single narrative fully explains the failure of the constitutional project that's why the paper is striving to bridge this gap and give another perspective in this direction, even though there is an arsenal of reasons that explains the failure.

*Keywords:* European Constitution, transnational, nation-state.

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### 1. Introduction

Following the failure of European Constitution scholars have tended to give numerous explanations and reasons for what went wrong in the process of drafting and ratifying. In this regard, the most common argument about the failure of EU Constitution was the absence of European *demos*, in this respect Jo Shaw (2000) said that: “no-*demos*” argument asserts that the failure of European Constitution resulted from the lack of shared culture, history and identity. But this was not the only reason; the current literature claims that there were conflicting motives regarding their national interests over supranational.

*“Where is the European Union heading? Where might be the final destination for European Integration?”<sup>1</sup>*

*What kind of constitution is emerging in Europe?”<sup>2</sup>*

In 2001 the Laeken Declaration of EU Presidents and Prime Ministers set up the Convention on the Future of Europe to tackle the issue democratic deficit the EU, this declaration referred to the possibility of returning powers from the EU to its Member States and mentioned the drafting of a constitution only as another possibility in the long run, nonetheless as an alternative of making proposals for a more democratic and less centralized EU, the Euro-federalists who dominated the Convention hurried into drafting a constitution which proposes replacing the existing EU by a new Union in the constitutional form of a supranational European Federal State.<sup>3</sup>

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<sup>1</sup> See: Kim, N.-K., & Jung, S.-R. (2010). Democratic Deficit, European Constitution, and a Vision of the Federal Europe: The EU's Path after the Lisbon Treaty. *Journal of International and Area Studies*, 17(2), p. 53. <http://www.jstor.org/stable/4310728> Last accessed on 27.03.2023

<sup>2</sup> See: The European Council announced the abandonment of the constitutional ‘concept’ in the summer of 2007, see the German Presidency Conclusions: European Council, Brussels, 21-22 June 2007. See Wilkinson, M.A. (2013). Political Constitutionalism and the European Union. *The Modern Law Review*, 76(2), p.191. <http://www.jstor.org/stable/41857468> Last accessed on 27.03.2023

<sup>3</sup> See: *WHAT THE EU CONSTITUTION DOES A 14-POINT CRITICAL SUMMARY* With an Appendix listing the 69 further national vetoes that would be abolished by the Treaty Establishing a Constitution for Europe and increase the EU's powers

<https://doi.org/10.62792/ut.jus.v12.i21-22.p2754>

Questions often raised by scholars, consequently led to the creation of European Convention to discuss the future of the European Union and to draft a European Constitution which would enable the EU to develop further and tackle the issue of enlargement.

The European Union has gone '*constitutional*' and that is beyond question but its direction has always been an open-issue. The creation of European Constitution despite the strong intellectual support was not a credible political ideal. To transform the institutional structure of European Union on the nation-state model sometimes was considered superfluous, sometimes redundant and quite often lacunae, so no single narrative fully explains this fable. What was clear then was the fact that the EU integration changed its rationale, it was a tentative to break the conceptual shackles that once framed EU as a pure economic community.

Needless to say, this was to a considerable extent a fact at its core. While at the other side of the scholarly spectrum a pendulum was always in a move until EU finds itself with a new *raison d'être*.

In this part I'll make some crucial leaps across the *longue durée* of the history of European Union, *en route* of its existence the European Union went through a number of treaty reforms. Joschka Fischer's acclaimed speech at the Humboldt University on 2000 manifest the start of a comprehensive and unprecedented debate on the future of Europe. (Brand, 2004)

The idea of European Constitution was mentioned by Fischer in which he discussed the challenges faced by Europe and the question of the 'finality' of European integration. The EU had to enlarge towards the east and southeast. At the same time the EU should maintain or improve its capacity for action. So, there was a "need for decisive, appropriate, institutional reform." Aware of the difficulties he argued:

*...there is a very simple answer: the transition from a union of states to full parameterization as a European Federation, something Robert Schuman demanded 50 years ago. And that means nothing less than a European Parliament and a European government which really do exercise legislative and executive power within the Federation. This Federation will have to be based on a constituent treaty (Fischer, 2000).<sup>4</sup>*

Fischer suggested that the Jean Monnet method of gradual integration used so far would not be adequate for the future. A European constitution was needed to deal with political integration and democratization of Europe. One possible approach to create a European federation would be the creation of a constitution.

From the beginning of 2002 a Convention on the Future of Europe worked to draft a new treaty. It was finalized in July 2003. An Intergovernmental Conference then met from October 2003 until June 2004, when the Treaty establishing a Constitution for Europe, hereafter referred to as the Constitutional Treaty, was agreed upon. (Laursen, 2008)

Even though the Treaty Establishing a Constitution for Europe failed it is widely recognized as a watershed and decisive moment in the history of European integration.

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<sup>4</sup>Speech by Joschka Fischer on the ultimate objective of European integration (Berlin, 12 May 2000)

TextIn a speech delivered on 12 May 2000 at the Humboldt University in Berlin, Joschka Fischer, German Foreign Minister, speaks in a private capacity in the debate on the future of the European Union. [https://www.cvce.eu/en/obj/speech\\_by\\_joschka\\_fischer\\_on\\_the\\_ultimate\\_objective\\_of\\_european\\_integration\\_berlin\\_12\\_may\\_2000-en-4cd02fa7-d9d0-4cd2-91c9-2746a3297773.html](https://www.cvce.eu/en/obj/speech_by_joschka_fischer_on_the_ultimate_objective_of_european_integration_berlin_12_may_2000-en-4cd02fa7-d9d0-4cd2-91c9-2746a3297773.html) Last Accessed at 28.03.2023

## 2. National sovereignty concerns

It is undoubtable that the European Union is never going to become a state, and its component Member States are bound to hold most of their sovereign features, but it is effortlessly reasonable to denote EU as a sui generis supranational legal structure unlike any other in the world even though the Treaty establishing a constitution for European Union failed.

The European Constitution did not fail solely due to lack of public support (referendum rejections in France and Netherlands) nor due to economic concerns or religious reasons. In fact, there were several factors that contributed to the failure of EU constitution but the scholars often distinguish the ‘national sovereignty concerns or the debate ‘national vs. supranational’ tended to polarize many scholars.

Quite often, in the process of EU integration, the power of nation-state intuitions was at a certain extent devoured by EU policies which were comprised it in the name of the profits that would arise to them from the establishment of the supranational entity.

According to Mangiameli, S. (2013): *“In EU the excessive growth of the Community’s competences has been seen as a threat to the political autonomy of the member states since much power has been accumulated in EU in the absence of a sufficient level of democratic legitimation”*.

Member states has always struggled to find their identity and set their boundaries in the EU integration process which means they were not ready EU law to cross their national law from this there springs the challenge to shape absolute and insuperable ‘counter-limits’ into the direction of Member states for the protection of the fundamental core of their national constitutions. This argument brings us closer to the hypothesis that the European Constitution failed mainly due to national sovereignty concerns.

## 3. The French ‘no’ and the Dutch ‘no’

The Treaty establishing a Constitution for Europe was presumed to unite and bond Europe but in 2005 the contrary happened numerous states organized referenda on ratifying the proposal for a European constitution in which Netherlands and France voted ‘no’<sup>5</sup> and it was obvious that the constitution would not be implemented. As a consequence according to Hobolt and Brouard (2012) the ‘no’-votes should not be assumed as a ‘black-and-white’ explanation of why the Constitution was rejected.

Regarding the French and Dutch backgrounds it reveals that the reality was very complex and both contexts were manifested by diverse issues. Overall, the French were more concerned about the social threats brought by the European Constitution, while in the Netherlands; a perceived cultural threat was more significant while in France, the main concerns were linked with French social welfare model. The Constitution was seen as a neo-liberal Anglo-Saxon model that included a strong focus on liberalizing the free movement of services, and as such, would undermine the French model. Furthermore, the economic and social consequences of enlargement and Turkey’s possible accession to the European Union were amongst the reasons why French voters said ‘no’. The unemployment rate, the euro skepticism feelings were amongst the salient reasons in France that motivated French voters to vote against the Constitution which at a certain extent was considered as a threat to national sovereignty and cultural identity.<sup>6</sup>

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<sup>5</sup> The Dutch referendum showed that 61.6% voted ‘no’ while the French came up with a higher turnout of 69.34% in which 54.87% voted ‘no’ [https://www.europarl.europa.eu/doceo/document/E-6-2005-3914\\_EN.html?redirect](https://www.europarl.europa.eu/doceo/document/E-6-2005-3914_EN.html?redirect) Accessed on 26.03.2023

<sup>6</sup> *The Dutch and French NOs to the referenda on the Treaty establishing a Constitution for Europe | Sciences Po - Dossiers documentaires.* (n.d.). [https://dossiers-bibliotheque.sciencespo.fr/une-vie-politique-europeenne-european-political-life/dutch-and-french-nos-referenda-treaty#footnote4\\_pnylolc](https://dossiers-bibliotheque.sciencespo.fr/une-vie-politique-europeenne-european-political-life/dutch-and-french-nos-referenda-treaty#footnote4_pnylolc) Accessed on 27.03.2023

While in Netherlands the reasons that brought this turnout were of a different nature in comparison to France, to this regard the reasons were solely linked with dissatisfaction with the speed of integration and the devaluation of the Dutch guilder against the German mark after the euro's introduction. According to Startin and Krouwel (2013) *“the fact that, financially, the highest net contributor to the EU's budget at the time was the Netherlands, was largely used by the ‘no’-campaign to blame the government for excessive support to the EU while not receiving many of its benefits”*.

The French and Dutch referendums are worthy of attention not because of the influence on the constitutional processes of European Union itself but also because they offer a different account or a case study of a campaign effects in direct democracies. The articles consulted and existing data and literature show overall that voters were presented with complex and multilayered proposals. The voters who rejected the constitutional Treaty did not reject Europe *per se* indeed they rejected the proposal which many Euro barometers showed that it was complex and multifaceted.

#### **4. Religious roots**

Even though there were many factors worth noting that contributed and played a role in the rejection of Constitutional treaty including the concerns over loss of national sovereignty, fears of democratic deficit, disagreements over the future of direction of European integration in this regard religion played a significant role.

Although it was not the primary reason for the failure of the European Constitution, it did play its part in the debate surrounding the draft document. Some religious groups in France expressed concerns that the draft constitution did not give enough recognition to the Europe's Christian heritage and this at a certain point may have contributed to the opposition of the document and there is no denying that Christianity has made a decisive contribution to European identity and reflection on the “Christian roots” of Europe remains a frequent issue and a leitmotif and with particular diligence occupies a relevant place in the public discourse whenever the failure of European Constitution is discussed.

The European Constitution did not fail solely due to religious reasons, while it did include references to Christianity and other religious tradition the main reason for its failure was mainly political.

European distinctiveness has been particularly marked by Christianity and humanism and there is no consent in relation to the relationship between religion and the state at Member State level. (J. Le Goff, 2003)

Notwithstanding future discourses about the failures of European constitution religion will always play a significant role in forming the public opinion and will impact the overall public opinion.

#### **Conclusions**

The question that often arises at the end of every discussion is so, what can we learn from the failure of the European Constitution? Even though the experience with European constitution-building was discouraging and has revealed that the constitution failed due to several reasons but one of the main reasons was the rejection by French and Dutch voters- this rejection was seen as a growing distrust of EU and its institutions, another reason for the failure of the constitutional treaty was the complexity of the provisions and the threat of national sovereignty, lack of public support, criticism of economic policies particularly with the regard of neoliberal reforms in which many French voters which were against believed that these policies would lead to further economic inequality of social classes. I still want to

continue with the assumption of continuity rather than discontinuity even though this paper makes it clear that constitution beyond the state is still a myth and not a reality. The ‘no’ votes was followed with a consensus of pause of reflection rather than an endgame of European Union so as a result we have the Lisbon Treaty of 2007 which contained many of the provisions of Constitutional treaty since the European voters did not to choose a pure federal route but a kind of ‘step back’ role in European integration process.

## References

- [1] Laursen, F. (2008). *The Rise and Fall of the EU's Constitutional Treaty* . Leiden, The Netherlands: Brill | Nijhoff. doi:<https://doi.org/10.1163/ej.9789004168060.i-560>
- [2] Brand, Michiel(2004/2). *Affirming and Refining European Constitutionalism: Towards the Establishment of the First Constitution for the European Union*. AvailableSSRN: <https://ssrn.com/abstract=617353> or <http://dx.doi.org/10.2139/ssrn.617353>
- [3] *Speech by Joschka Fischer on the ultimate objective of European integration* (Berlin, 12 May2000)[https://www.cvce.eu/en/obj/speech\\_by\\_joschka\\_fischer\\_on\\_the\\_ultimate\\_objective\\_of\\_european\\_integration\\_berlin\\_12\\_may\\_2000-en-4cd02fa7-d9d0-4cd2-91c9-2746a3297773.html](https://www.cvce.eu/en/obj/speech_by_joschka_fischer_on_the_ultimate_objective_of_european_integration_berlin_12_may_2000-en-4cd02fa7-d9d0-4cd2-91c9-2746a3297773.html)Last Accessed on 28.03.2023
- [4] Kim, N.-K., & Jung, S.-R. (2010). Democratic Deficit, European Constitution, and a Vision of the Federal Europe: The EU's Path after the Lisbon Treaty. *Journal of International and Area Studies*, 17(2), p. 53. <http://www.jstor.org/stable/4310728> Last accessed on 29.03.2023 Last accessed on 27.03.2023
- [5] Wilkinson, M.A. (2013). Political Constitutionalism and the European Union. *The Modern Law Review*, 76(2), p.191. <http://www.jstor.org/stable/41857468> Last accessed on 27.03.2023
- [6] Mangiameli, S. (2013). The European Union and the Identity of Member States. *L'Europeen Formation*, 369, 151-168. <https://doi.org/10.3917/eufor.369.0151>
- [7] Shaw, J. (2000). “Process and Constitutional Discourse in the European Union.” *Journal of Law and Society* 27(1), 11-13.
- [8] J. Le Goff *The Birth of Europe* (Malden MA and Oxford UK, Blackwell 2005) 22 and J.T.S. Madeley, “European Liberal Democracy and the Principle of State Religious Neutrality” in J.T.S. Madeley and Z. Enyedi (eds.), *Church and State in Contemporary Europe: The Chimera of Neutrality* (London, Frank Cass Publishing, 2003).
- [9] BINZER HOBOLT, Sara. BROUARD, Sylvain. « Contesting the European Union? Why the Dutch and the French Rejected the European Constitution ». *Political Research Quarterly*, 2011, vol. 64, n° 2, p. 309-322. Disponible sur : <<https://aces-distant.sciences-po.fr/fork?www.jstor.org/stable/23056393>> (Consulté le 26-04-2019).
- [10] Startin, N., & Krouwel, A. P. M. (2013). Euroscepticism re-galvanized: The consequences of the 2005 French and Dutch rejections of the EU constitution. *Journal of Common Market Studies*, 51(1), 65-84. <https://doi.org/10.1111/j.1468-5965.2012.02301.x>