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## The EU Constitution and Europe's Democratic Deficit

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I would argue that, from the perspective of the United States, the defeat of the European Union Constitution in France and Holland was a very positive development. This is so not merely because that document was flawed, but because its rejection was a severe blow to the “European Project” itself. Defeat of the EU Constitution offers the United States an opportunity to rethink its approach to the question of further European integration, and it is an opportunity Americans should take.

I understand that not all Americans, and not all American conservatives, would agree. Support for ever closer European integration has, in fact, been a fundamental aspect of U.S. foreign policy since the Second World War ended, and has been supported by both political parties. The reasons were simple. An increasingly united Europe was seen as necessary to avoid yet another general war, and as a means of checking Soviet aggression.

Today, of course, the Soviet Union is an increasingly distant memory, and those states at the heart of the European Project, France and Germany, who once regularly disturbed the world's peace, now struggle to make even symbolic military contributions against the threat of militant Islamism. This, in and of itself, would justify a serious reconsideration of U.S. policy towards European integration. There is, however, another, far more important reason to rethink that policy and, indeed, to reverse it altogether. The European Project, as today defined by its most powerful advocates, and especially by the leadership of France

### Talking Points

- Defeat of the EU Constitution by French and Dutch voters offers the United States an opportunity to rethink its approach to the question of further European integration.
- The EU has adopted, and is promoting, a vision of how human society should be governed, and how the international community should be organized, that is antithetical to American traditions of independence and self-government.
- The European leadership is engaged in a determined effort to create a new super-state that is capable of acting as a “counterweight” to American power and influence in the world.
- We are not enemies but competitors. The sooner Americans recognize that fact, the sooner we can set about winning the competition.

This paper, in its entirety, can be found at:  
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and Germany, is both profoundly anti-American and profoundly anti-democratic.

### Creating a Super-State

Let us do that most undiplomatic of things and actually take the European leadership at its word. The European Project is now an open and determined effort to create a new super-state that is capable of acting as a “counter-weight” to American power and influence in the world. In fact, this already is the role the EU has established for itself. The Constitution was designed to make its operation more effective, and to ensure that the smaller states could not impede the pursuit of this policy.

What is the objective evidence for this claim—beyond, of course, the public statements of French, German, and EU officials and their collective efforts to undermine NATO, U.S. policy in the Middle East, and U.S. policy in the Far East? I would offer, as an example, the EU’s very determined efforts to force the United States into the international legal regime established by the Rome Statute of the International Criminal Court.

For its part, the United States definitively rejected the ICC in 2002, when President Bush informed the United Nations that America would not proceed to ratify the Rome Statute. That treaty is, of course, a complicated document. There are many very good reasons why the Bush Administration was right to reject it. Suffice it to say that acceptance of the ICC’s authority would have shifted a most fundamental attribute of sovereignty—the right to determine the scope and meaning of the international legal obligations of the United States—away from our own constitutionally established institutions to the ICC’s prosecutors and judges. The principle of “complementarity” notwithstanding, for its member states, the ICC is now the ultimate arbiter of the meaning and application of the most important international criminal norms related to the use of armed force. Were the United States an ICC member, the court would have the right to enforce *its* interpretation of the law by prosecuting and imprisoning American officials. The ICC would not be accountable to the American people for its actions.

The EU, however, refused to take no for an answer. Its membership dominates the ICC’s Assembly of State Parties, wielding one-quarter of the available votes (25 of 99) in that body. Eight of the court’s 18 judges are citizens of EU member states. Not surprisingly, the EU has made “universality” for the Rome Statute a primary goal of its foreign policy, and has taken a number of concrete steps to achieve this result.

Acceptance of ICC jurisdiction is, of course, mandatory for any state wishing to join the EU—and that’s fair enough. In addition, however, the EU has opposed the U.S. policy of obtaining agreements from ICC member states (whether or not EU aspirants) that would shield American citizens from ICC jurisdiction—so-called Article 98 agreements. EU officials have justified this policy by characterizing Article 98 agreements as efforts to obtain “impunity” for the U.S. The terminology here is highly significant. It is designed to suggest that the United States is already properly subject to the ICC’s authority, and that it is somehow trying to escape pre-existing international legal obligations.

This is simply not the case. The rule of law did not begin with the ICC. The United States has in no way violated its international obligations by rejecting the Rome statute or by seeking Article 98 agreements to protect its citizens from that court’s extravagant jurisdictional claims—which reach to the officials and citizens of non-party states and are inconsistent with established international law rules. America has simply refused to join a new and untried enforcement mechanism that is, as an institution, inconsistent with the United States’ most fundamental legal and political traditions.

Perhaps most telling, however, is the EU’s policy of funding American non-governmental organizations, such as the Coalition for an International Criminal Court, which are dedicated to changing the U.S. government’s policy with respect to the Rome Statute. This is open and deliberate interference in the domestic political affairs of another sovereign. It is, to say the least, an unfriendly act. It is the sort of thing that the United States has itself done, in one form or another, in its efforts to bring democracy to the Soviet bloc and other authoritarian regimes. It is entirely inappropriate with respect

to a fellow democracy. The EU has, in fact, deployed “soft power” against the United States—and that is the rub.

### Surrender of Sovereignty

The EU has adopted, and is promoting, a vision of how human society should be governed, and how the international community should be organized, that is antithetical to American traditions of independence and self-government. As an organization, the EU’s power is based on a surrender or “pooling” of sovereignty by its member states. It is, therefore, hostile to un-pooled sovereignty as an organizing principle on the international level. At the same time, sovereignty is the guarantee of self-government.

In this connection it is high time that American policymakers questioned their assumption that the European Project is, at bottom, a democratic experiment. It is not. I would argue that the EU is increasingly moving towards, and already has adopted in certain respects, a form of government that fairly can be described as absolutist or neo-absolutist.

Let us, for a moment, play “if” history. What if the last two hundred years or so, in which genuine democracies appeared in Europe, were not leading to the “end of history”? What if this period of Enlightenment, Revolution, and Liberalism in the classical sense, was an aberration, a detour? What if Europe is now returning to a normalcy of its own, in which elites govern without reference to the electorate on most policy questions, most of the time?

Consider. As a form of government, absolutism actually has very little to do with kings and monarchy. That was simply its drapery last time around. Nor does it necessarily imply lawlessness or totalitarianism. Individuals have rights in absolutist states, and may very well be equal before the law. But absolutism is not democracy.

In practice, absolutist government is government by bureaucracy. Not just the administration of government programs by civil servants, but the establishment of policies and priorities by men and women who are not elected and who do not need

to regularly answer to the electorate for their actions.

Ironically, under the EU principle of subsidiarity—which purports to vest decision-making authority on various issues at the level nearest to the electorate “as possible”—the most important decisions already are taken by the unelected officials in Brussels, particularly by the European Commission, which enjoys the initiative in most legislative matters. Indeed, the very fact that European officials, and other supporters of the European Project, spend so much time debating what might be the “appropriate” role of national parliaments suggests that something has gone very, very wrong. Under the American system of government, of course, there is nothing to discuss. The appropriate role of the legislature is to initiate, debate, and enact legislation—to make policy. Not merely to confirm legislation initiated, drafted and adopted by others.

Let me emphasize that the EU’s system is not comparable to our own federalism, where federal law will trump state law in appropriate circumstances. Under our Constitution, the question is whether an issue will be decided by elected representatives on the state or national level. The effect of the EU model is to remove important issues from the realm of popular politics altogether. To quote Romano Prodi on the point: “national governments are bound to their countries’ electoral cycles. Short-term domestic agendas can thus easily deflect them from considering the long-term interests of Europe as a whole.”

### Reasons for Hope

Where does this leave the United States, the product of that period of European Enlightenment and Revolution. Potentially, very much alone. Great Britain, of course, may finally decide that it is in, but not of, Europe. The Danes have been skeptical, when given the opportunity to express an opinion, as have the Dutch. Oddly enough, however, it appears that we may also be able to count on the French. Who would have imagined that?

The analysts have given many reasons for France’s rejection of the EU Constitution, including economic malaise, animus towards the “Ang-

lo-Saxon” economic model, and fear of the “terrible,” but very hardworking, Turks. It seems to me, however, that what the French (and the Dutch) voters were really saying is that the elites, whether in Paris, Berlin, or Brussels, who have been pushing the project of a greater European state have not been listening to them. Their concerns are not valued, let alone addressed, and they don’t like that.

Whatever we may think of those concerns, this objection is very good news. It suggests that, at least on the level of the individual voter, the people of Europe still think that they have a right to have a say in how they are governed. And that means that there is hope.

But it is just that—hope. In the near term, the United States must recognize that the EU is championing a different system of government than our own, and a different sort of international order from the one we have known, where American sovereignty has nourished American democracy. Whatever happens to the European Constitution, the EU can be expected to continue to promote super-national organizations as a means of checking American power. We are not enemies. But we are competitors and the sooner Americans recognize that fact, the sooner we can set about winning the competition.

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