

# A CONSTITUTION FOR EUROPE – COMMENTS AND PROPOSED CORRECTIONS

## TWENTY MEZZOGIORNOS\*

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Europe will soon have a constitution. But if the draft presented by Valéry Giscard d'Estaing is anything to go by, it will be imbued with old ideology. The document ignores free-market economics. There is not a word about the protection of property rights, and no commitment to free enterprise and the division of labour. Instead, it contains dubious secondary objectives like "sustainability" or "balanced economic growth", as if a constitution could ensure that such concepts become reality.

Far too little thought has been given to legal and economic ramifications of these grand constitutional proclamations. Take the proposed creation of European citizenship together with the prohibition of discrimination on the basis of national citizenship. Both were implicit in earlier treaties and are central to the European idea: Europeans have joined together and should not discriminate against each other. But the new draft would give these principles the status of constitutional law. If applied to other "rights" enumerated in the document, such as social cohesion and social protection, they could create social harmonisation by the backdoor. That would have grave consequences for the European economy.

Under the current principle of inclusion, any EU citizen who moves from one EU country to another to work is immediately and fully integrated into the social system of the host country. The EU migrant pays taxes and social insurance contributions and together with his family receives access to all the state benefits available

to domestic employees. A migrant worker with a below-average income profits from the income redistribution of the welfare state just as a national does. According to the calculations of the Ifo Institute, the net benefit that Germany has been granting amounts to €2,300 a year in the first 10 years. By restricting benefits to working migrants the cost may be limited. Those who migrate for reasons other than employment receive no welfare benefits apart from emergency health care. However, the current draft constitution could mean that the inclusion principle would apply to *all* migrants from EU countries. This is not stated explicitly. But the draft includes no restrictions on the rights, so the courts would probably interpret the concept of social inclusion even more generously than they do already.

Current problems with the principle of inclusion will only be amplified. If having work is no longer required before immigrating to a welfare state, the flood-gates will be opened. Masses of poverty refugees would move from eastern European countries to seek their fortune. To prevent this chaos, EU migrants should have to wait for full welfare benefits, such as rent subsidies and public housing, while enjoying access to public services and other benefits they pay for via taxes and social insurance contributions. If differential treatment of this sort is not allowed, governments will be forced to compete to trim welfare benefits so that they are no more attractive as destinations than their neighbours. Traditional welfare states would not survive.

Harmonisation of social standards could prevent a downward spiral. But economic conditions are far too varied for this to work. In all eastern European countries, wages are less than one third of German social welfare assistance, and even in some Spanish, Portuguese and Greek regions, wages are less than half of German social welfare assistance. Harmonising welfare at a level still acceptable to western Europe would lead to the deindustrialisation of whole regions in the south and east.

\* Published as "There is no European Right to a Place in the Sun", *Financial Times*, February 13, 2003, p. 11; see also "Zwanzig Mezzogiornos", *Financial Times Deutschland*, February 13, 2003, p. 30.

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The economic pain would then have to be eased by large fiscal transfers between governments. Theoretically, this is possible. Indeed, the draft constitution provides for such social cohesion. But the results could be disastrous. Look at Germany and Italy. The German government contributed to east Germany's lack of competitiveness by offering western welfare payments which pushed wages above productivity. Similarly, the Italian social system has prevented wages in southern Italy from falling to a competitive level. Consequently, both eastern Germany and the Italian Mezzogiorno suffer from mass unemployment. Productivity is stuck at only 60 percent of the other regions. And they are dependent on vast financial transfers.

It would be unwise to impose the Italian-German model onto Portugal, Spain, Greece, eastern Poland, Slovakia, Romania or Bulgaria, but this is precisely what a European social union would do. There would not be two but twenty Mezzogiornos in Europe if the non-discrimination planned in the draft constitution were applied without restrictions to social benefits for all EU citizens.

## CORRECTIONS TO THE DRAFT TEXT OF THE ARTICLES OF THE TREATY ESTABLISHING A CONSTITUTION FOR EUROPE

This note contains proposed amendments and corrections of the first 16 articles of the constitution as drafted by the Convention on the Future of Europe.

New passages are in bold letters, cancelled passages are crossed out.

### Titel 1

#### Article 3: The Union's objectives

(2) The Union shall work for a Europe of sustainable ~~development~~ **prosperity and stability** based on ~~balanced economic growth~~ **the protection of property rights, economic freedom, the division of labour** and social justice, with a free single market, and economic and monetary union, aiming at full employment and generating high levels of competitiveness and living standards. It shall **remove obstacles to** ~~promote~~ social cohesion and **promote** economic cohesion, equality between men and women, ~~and~~ environmental ~~and social~~ protection and ~~shall develop~~ scientific and technological advance. ~~including the discovery of space.~~ It shall encourage solidarity between generations and between States, and equal opportunities for all.

#### Comments

*Economic growth cannot be guaranteed by anyone, let alone a constitution. The protection of property rights, economic freedom and the division of labour are the cornerstones of a market economy and they need the irrevocable legal support that only a constitution can provide.*

*Social cohesion is desirable, but removing obstacles is all the EU needs to do since market forces by themselves will bring about rapid cohesion. There is an optimal cohesion speed, and government interventions aimed at increasing the speed of social cohesion are more likely to harm than to help the economies involved. East Germany is the striking example. Policy measures to promote economic*

cohesion such as support for local infrastructure can be defended. However, measures to directly promote social cohesion and protection are counter-productive. They are extremely costly, result in mass unemployment and slow down the speed of economic cohesion.

*The discovery of space is too specific for a constitutional goal. This smells after transfers to the European Space Agency in Paris.*

(3) The Union shall constitute an area of freedom, security and justice in which its shared values are developed and the richness of its cultural **and social** diversity is respected.

*Comment*

*In connection with article 16, the amendment reduces the risk of social harmonisation.*

#### **Article 7: Citizenship of the Union**

(2) Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:

- the right to move and reside freely within the territory of the Member States;
- **the right to use the public infrastructure as well as the security and legal protection in their Member State of residence under the same conditions as nationals of that state;**
- **the right to work and the duty to pay taxes and fees as well as the right to participate in contribution-financed social security systems in their Member State of residence under the same conditions as nationals of that state;**
- the right to vote and to stand as a candidate in elections to the European Parliament and municipal elections in their Member State of residence under the same conditions as nationals of that State;
- ...

*Comment*

*Full social inclusion would be a major problem for Europe triggering off mass migration from the new member countries, imposing high fiscal burdens on the target countries and eventually eroding the European welfare state. Rather than restricting the non-discrimination clause of Article 6, the enumer-*

*ation of migrants' rights makes it possible to exclude the constitutional right to receive tax financed social benefits and be a net recipient of government resources, even if nationals enjoy such a right. The exclusion makes it possible for a state to prevent welfare shopping. Proposals to delay the full inclusion of migrants in the redistributive activities of the state in some initial period after their entry become possible. (See Scientific Council of the German Ministry of Finance, *Freizügigkeit und Soziale Sicherung in Europa (Economic Freedom an Social Security in Europe)*, Bundesministerium der Finanzen, Berlin 2001, as well European Economic Advisory Group at CESifo, *Report on the European Economy, Chapter 3: "Rethinking Subsidiarity in the EU: Economic Principles"*, p. 76-97, Munich 2003.)*

#### **Article 12: Shared competences**

(4) Shared competence applies in the following principal areas:

- internal market
- area of freedom, security and justice
- ~~agriculture and~~ fisheries
- ~~international~~ transport
- trans-European networks
- ~~energy~~
- ~~social policy~~
- economic ~~and social~~ cohesion
- environment
- public health, and
- consumer protection.

*Comments*

*Agriculture certainly is not a policy area with international spill-over effects that could justify EU action, despite the obvious vested interests of some countries.*

*Transport is an EU issue only to the extent that it is international.*

*Energy is of no concern for the EU. Energy is a normal private good which is efficiently allocated via the market process. There is no need to single it out relative to other goods.*

*For the reasons explained above, social policies and social cohesion do not belong to the set of EU policies.*