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## The European Constitution and Peace: Taking the Heat out of Politics

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### 1.1 Introduction

When setting out on a major project, it is normally a good idea to be clear about the objective. So, when considering the project of devising a new constitution for the European Union, the first question should be: What is a European constitution for? This leads to the equally basic question: What is the European Union for? Clearly, answers to these questions will not be simple. However, without these answers, the task of designing a European constitution—or appraising any proposed constitution—will be inchoate.

Notice that the questions posed are on the very nature of the European Union, and therefore what purpose its constitution might serve. But is there such a thing as a single (though complex) purpose relating to an organization such as the European Union? If so, how does it relate to the various aims and objectives of the institution as understood by the numerous actors that operate within the European Union? How does an organization's underlying purpose relate to the policies, behavior, and activities of the organization? A simple story about a firm, as it is usually depicted in economic models, may help elucidate some of the issues involved. From the point of view of shareholders, the fundamental purpose of the firm is to generate profits or shareholder value. However, this purpose may best be achieved if those who operate within the firm—its managers—direct their efforts toward rather more detailed and explicit objectives. And neither the fundamental purpose, nor the detailed objectives may be easily deduced by observing the behavior of the firm or its employees. If we ask the question, what does the firm do? we invite a barrage of specific answers listing the variety of goods produced and the policies in place in relation to marketing, investment, stock management, staff training, and so on.

All of these things are important, but as our intention is to question the basic design of the firm—its constitution—and ask whether it is “fit” for the fundamental purpose of the firm, we need to see through the surface patterns of behavior and policies of the firm to get a true sense of its fundamental purpose.

But what is the firm’s fundamental purpose? Our simple story began from the point of view of the shareholder, and there is clear logic in this since it is the shareholders who control the constitution of the firm in a reasonably direct sense. But this is not the only possible starting point. We might have started from the point of view of the population at large (or the government, as the representative of the population) and asked about the wider social impact of the firm. This path is precisely the one we would follow if we were concerned with the design of the regulatory environment within which the firm operates. So we might be reminded that at the constitutional level, the firm is surrounded by other constituencies, implying some ambiguity as to the identification of its fundamental purpose. In this case the ambiguity arises because a firm may be seen as an organization within a larger organization—the state. Therefore the constitution of the firm has to be fitted within the constitution of the state. In the case of an autonomous and fully independent state, this source of ambiguity should not arise. If a state is truly and fully sovereign, its constitution will not be subject to any surrounding constitution (though, of course, the state may enter into binding commitments and treaties with other states). The European case is clearly a case in which the ambiguities arising from the nature of the relationship between constitutions are important.

Our initial questions were designed to cut through to the basic constitutional level and so complement the more descriptive questions asked, for example, by Alesina, Angeloni, and Schuknecht (2001) in their paper entitled “What Does the European Union Do?” and by Tabellini (2002) in a recent discussion of the “Principles of Policy-making in the European Union.” While both papers explicitly take up the issue of the reform of the European constitution, both start from discussions of what the European Union actually does in a number of policy areas—trade policy, public goods policy, agricultural policy, regional policy, and so on—in order to identify potential areas of improvement in policy and in the structure of decision making. While we recognize the value in this approach, we also recognize a danger. The danger is that a vital part of the rationale and purpose of the European Union might be missed if we focus only on its policies and practices.

A somewhat negative way of approaching this point, adopted by Mueller (1996), is to argue that the European Union lacks the standard rationale that public economics would provide for the formation of a federal union. Thus, if we consider the spatial properties of public goods provided (or as might be provided) within the European Union, it is difficult to see why the formation of a larger more encompassing political entity is needed. Even more difficult to rationalize is the need for the further enlargement of the European Union. Where exactly, Mueller asks, are the public goods with European Union-wide scope? Where are the transnational externalities that make construction of a larger polity necessary? While there are advantages in constructing a free-trade area in Europe the same advantages might be expected to follow from the abolition of trade barriers anywhere, so that there is nothing distinctively European here.<sup>1</sup> Similarly, while there are some advantages in constructing a currency union in Europe (although these advantages are yet unclear to many both inside and outside of the euro zone) they can hardly be claimed as the rationale of the European Union as a whole. The essential point is that conventional public economics provides little by way of a basic rationale for the European Union in terms of the standard set of economic policies. This point may be taken to provide indirect support for the view that the conventional public economics approach is missing at least one vital ingredient.

A more positive way of approaching the idea of a “missing ingredient” is to take seriously the rhetorical and political claims that often surround the European Union. We will make no attempt to analyze Jean Monnet’s foundational rhetoric, nor the writings and speeches of more recent European Union supporters, but it is clear that the most repeated and heavily stressed theme is that of the European Union as a force for peace in Europe. Over time, as the EU has become more firmly established, and the memory of European war has faded, this line of argument has remained—at least implicitly—in almost all EU proclamations. The official Web site of the European Constitutional Convention,<sup>2</sup> for example, opens its discussion of the issues to be addressed by the Convention with the statement “For over half a century the countries of the European Union have lived in peace.” Similarly its discussion of the question of the enlargement of the European Union opens with the statement: “Fifty years on the Union stands at a crossroads, a defining moment in its existence. The unification of Europe is near. The Union is about to expand to bring in more than ten new Member States, predominantly Central and Eastern European.

This will finally bring to a close one of the darkest chapters in the continent's history. At long last, Europe is on its way, peacefully, to becoming a coherent whole." As a final example, the Draft text of the articles of the treaty establishing a constitution for Europe issued in February 2003 also maintains, as the very first item in the statement of the Union's objectives, "The Union's aim is to promote peace."<sup>3</sup> Just as the two world wars provide the essential backdrop to the formation of the European Union, so the cold war provides the essential backdrop to its current enlargement. In both cases a key aspect of the essential and continuing motivation of the European Union is the institutionalization of peace.

Peace in Europe was clearly a necessary condition for the foundation of the European project to ensure lasting cooperation among the major nations of Europe, particularly France and Germany. Our point is simply that it was the recognition of the potential fragility of this peace in the face of European history over the preceding 150 years that played a vital role in the design of the European project, and has remained its main motivation.

Now, the conventional public economist could respond that if peace is the "missing ingredient," it should be incorporated into the conventional analysis as an international public good. A sharp public choice theorist might then point out that war and peace relate directly to the political sphere rather than the marketplace. So, in this view, the analysis should be of political failure rather than market failure as the appropriate starting point for understanding the constitutional requirements of peace.

Here, at least, we have a plausible thesis: political failure in a state can produce a disposition toward war. The threat of war induces each state to engage in self-protective measures of which war itself is a likely final outcome. The initial warlike propensities in country A create, as we might put it, a negative externality for countries B, C, and D. Bad things can "spill over" the borders, and they are matters of political rather than of market failure.

We think that this thesis deserves to be taken seriously in trying to understand both the rationale offered by the architects of the European Union and the animating spirit of the project among the populace. The determination to prevent European conflict should be seen not just as a piece of incidental political advertising but as a serious argument to be taken at face value and appraised as best we can via the perspectives

and methods that are our stock in trade. Accordingly we identify four questions:

1. Do our models of national political process adequately account for war as a feature of international political interaction?
2. Does our account of war as a political phenomenon suggest that some form of supranational federation from the bottom up is likely to contribute to a solution to the problem?
3. If political amalgamation is a plausible solution to European conflict, what are the implications for the more detailed institutional structure of the European Union?
4. Is there a risk that the shift to confederation will create corresponding difficulties in international relations between Europe and other powers?

In this chapter, we engage these questions, and do so in defiance of principles of intellectual comparative advantage. These are matters on which economists have had relatively little to say. Perhaps such questions should be left to historians and international relations experts. But if so, so should much of the exercise of European constitution-making if the object of peace-building is to be a primary guiding principle of European institutional design.

## 1.2 War as Politics

In this section we first sketch three approaches to the analysis of war that might be taken up within the broadly rational actor tradition: one based on redistribution, one based on strategic interaction between nations, and one based on political failure. It should be no surprise that we argue that the third approach is the most promising. The remainder of the section is devoted to a slightly more detailed discussion of the nature of a political failure that contributes to war.

Within the standard rational actor analysis of politics, one chief engine of action is redistribution of one sort or another. Typically, within public choice analysis, politics is viewed as a scramble among competing interests, and policy decisions are often explained in terms of the “efficient” redistribution from minorities to decisive majorities, or from supine and ill-informed majorities to well-organized and politically influential minorities. Which direction of transfer predominates

depends, roughly, on whether majoritarian electoral process or special interest lobbying is the more significant mechanism in play in policy determination.

The immediate question that comes to mind in a public choice context in attempting to explain war is, What redistributions are at stake? There are certainly stories one might tell here. Some people do benefit from war: suppliers of armaments and military inputs, perhaps the senior military establishment (those who survive), and individual politicians with a comparative advantage in war government. But the benefiting groups are too small and too unpredictable *ex ante* to explain wars either individually or generally. The fact that *ex post* some (remarkably few) people did better as a result of the great world wars than they would otherwise have done does not in itself constitute a promising route to an explanation of what happened.

Our view of the matter is that wars, at least large-scale modern wars but almost certainly more minor wars as well, impose very substantial net costs on even victorious combatant nations. The gross costs are typically very large and widespread, and the gross benefits are generally small, and focused on a small fraction of the population. Under these circumstances a general explanation of war based on the redistributive forces of political processes seems implausible.

An alternative account of war might focus on nations rather than individuals as the relevant actors and see war as one possible outcome of a game played between nations: perhaps a Prisoner's Dilemma Game in which a peaceful outcome Pareto dominates war, but where war is the dominant strategy for individual nations; or an Assurance Game in which it pays to play "peace" only as long as everyone else plays "peace"; or a Chicken Game in which players occasionally fail to "pull out."<sup>4</sup> However, we should make two points about all such attempts. First, any such attempt must be based on identifying expected net gains from war for at least some nations. Second, in focusing on the nation as the effective actor, all these formulations deny the more disaggregated mode of analysis that is a characteristic of public choice analysis and economics more generally: individual conduct is subsumed under the presumed common interest of the nation-state players. Rational actor analysis has nothing further to contribute. We think this approach is not helpful, in general, although there may be specific circumstances where war is closely identified with an individual—as in a dictatorship.

In more democratic settings Kant's famous conjecture that democracy would be conducive to a reign of "perpetual peace" arises. Once the political decision-makers and the affected potential combatants are one and the same group, individual rationality should dictate that war is rarely the preferred alternative. While dictators may make wars on democracies, and democracies may be forced to enter the field, the expected losses will effectively restrain bellicose action by well-functioning democracies.

Despite the empirical evidence that war is rare between democracies,<sup>5</sup> we think that this conclusion is too optimistic about democracies. It too easily assumes that democracies work well, that they provide a direct connection between the interests of the citizenry and the actions of the state. On the contrary, we think that collective decision-making is prone to certain kinds of failures—one symptom being the excessive propensity to make war. By "excessive" we do not mean "large", however. We fully accept the empirical evidence that democracies are less likely to engage in wars than nondemocracies, and that the absolute frequency of war between democracies is low. Nevertheless, since the costs of war can be extremely high, even a small reduction in the probability of war may represent a valuable prize.

If circumstances arise where national leaders are engaged in an international diplomatic game in which war is one possible outcome, we think that they will generally be encouraged by features of the democratic political system to use strategies that involve an excessive risk of war. Indeed, we suspect that democratic public opinion, rather than always playing the role of a brake on the war-like ambitions of a leader, will sometimes oblige relatively pacific leaders to adopt more bellicose strategies.

There are, no doubt, many possible ways to model this political failure. Hess and Orphanides (1995, 2001), for example, build on the principal-agent model of political leadership, where incumbent leaders need to build a reputation if they are to secure re-election and where, for some leaders (those with modest economic management skills), participating in an avoidable war may be the best means to that end. This issue arises because voters cannot observe, *ex ante*, all the detailed characteristics of candidates for political leadership. War sometimes becomes a means by which leaders can signal certain desirable qualities of character to the electorate.

In a slightly different but parallel view, Bueno de Mesquita and Siverson (1995) and Bueno de Mesquita et al. (1999) provide a model of the link between domestic politics and war that emphasizes the need of political leaders to compete for office. The results suggest that democracies will choose war in some circumstances and, conditional on being at war, will devote more resources to war than would an otherwise similar autocracy. This reflects the fact that a democratic leader has more to lose politically in the event of losing a war and so will be both more wary of entering a war, and more determined to win once it has commenced.

These models focus on political failures that relate to political leaders. While we agree that such models may be important, we wish to explore a different form of political failure that locates the failure within the logic of popular voting in a large electorate. The central theoretical point that we stress relates directly to the nondecisiveness of individual action in large-scale collective action contexts. In a large electorate setting each individual voter is asymptotically irrelevant to the final outcome. By this fact, the relative payoffs to different elements in the agent's utility function are radically altered. The voter can express her views without the discipline of having to take responsibility for the consequences that her actions (together with the actions of others) bring about. Her posture toward the objects of collective choice becomes symbolic or expressive, rather than instrumental. The general logic of this claim has been developed at some length in other places (Brennan and Lomasky 1993; Brennan and Hamlin 1998, 1999, 2000a, b) and will not be repeated in detail here. The general point is one that should be familiar to economists, who generally mistrust opinion poll data and the results of experiments in which subjects are not faced with the full incentives that would apply in real world settings.<sup>6</sup>

Individuals at the ballot box are more like people cheering at a football match than shoppers in a supermarket. Voters express an opinion but they are not individual choosers. The opinions they express are likely to be conditioned more by issues such as the individual voter's self-image and the identification with the public image of a candidate, than by direct considerations of the individual's interests and how they would be affected by the candidate's policies. We believe this fact is central in understanding one important source of political failure. An important feature of democratic politics is that electoral competition brings to the fore issues for which individuals are likely to cheer—matters of high moral value, or significant symbolic resonance—and

settles them on the basis of the volume of cheering. This feature sometimes has the effect of producing political outcomes that few, if any, of the individual voters would actually choose if they were given the responsibility of individual choice. The instrumental costs and benefits of alternative courses of action are salient in a setting where the individual is decisive. Those instrumental considerations are backgrounded in a context where the individual is only able to cheer.<sup>7</sup> The contexts in which symbolic/expressive considerations are likely to diverge greatly from instrumental considerations are those where the prospect of this form of political failure is most pressing.<sup>8</sup>

One such prominent context is that of military conflict. Nationalism, military pride, and patriotism are matters that engage a populace's emotional and expressive energy. It is indeed an alarming feature of a democratic system that political leaders are able to mobilize enormous popular support by a careful timing of military adventures. Margaret Thatcher at the time of the Falklands war, George Bush Sr. at the time of the first war against Iraq, and George Bush Jr. in the second war against Iraq are recent examples. But we should be clear as to what exactly we take these cases to be examples of. On face value, they indicate a positive relationship between the electoral popularity of incumbent leaders and war, and not necessarily the leaders' manipulation of that relationship. We provided no evidence of the leaders' motives in the cases cited, and draw no inferences. However, the general proposition that leaders desire to retain office, together with the empirical evidence that manipulation of external affairs is a possible mechanism toward this end, should be enough to make one at least mildly anxious. Of course, we do not need these recent examples to make the point. It is a commonplace that the best mechanism for the creation of national unity is a common enemy, invented or otherwise.

An exaggerated impulse toward war then is, we think, an outcome of political failure. It is not a sort of political failure that the intellectual habits of orthodox public choice theory are likely to focus on, however. This is because the way in which the "free-rider problem" becomes evident is less a matter of the undersupply of defense (a euphemism for military expenditure) than of oversupply. It is nevertheless an instance of "free-rider" reasoning in two senses. First, an individual voter is effectively free-riding on the collective expression of enthusiasm for the military enterprise. The logic of interaction that characterizes this voter's dilemma is very close to the logic of the  $n$ -person Prisoner's Dilemma, though we concede that the application is somewhat different.

Second, the action of each domestic electorate imposes a substantial external cost on neighboring constituencies. It would not be in the interests of any country to seek to solve a domestic problem of excessive bellicosity unilaterally. For a nation surrounded by a sea of belligerent neighbors, it would be a dubious strategy to be pacific.

Now it should be apparent that the latter consideration is a central informing proposition on which the European project is constructed. Forming a larger political entity seems to offer a means by which the relevant political externality can be internalized. If the diagnosis that we have offered is at all plausible, then a battery of questions arises. Is the larger political entity itself feasible? How large should it be, and how should it be structured? Would the creation of a Union of nations not simply shift the problem from one location to another—from the national level to the level of relations among Unions of nations?

Some of these questions remain salient, even if our particular diagnosis of political failure is mistaken. Consider the relationships among Unions of nations, for example. If creating an inclusive political entity is a solution to the forces that make for war within a specific region, it is proper to worry about the prospect of war between that larger entity and those entities and countries left outside. Put more pointedly, the impulse for a confederated Europe already draws part of its energy from a desire to be a big player, and specifically one on the same scale as the United States. There are further suggestions that European countries ought to be coordinating their aid policies in such a way as to defend and promote united political interests—much as the US government does. And what goes for aid policies goes no less for bargaining strategies on intellectual property, trade arrangements, and the whole range of issues on which power at the international negotiating table is important. Is it totally implausible that fifty years from now, tensions may develop among the United States, Europe, and an Asian bloc to the point of war? History is full of alliances and wars that seemed implausible fifty years earlier. One thing that public choice theory teaches us is that coalitions of interests are unlikely to be stable. It may simply be a failure of the imagination to conceive of the possibility of a future war between Europe and the United States, especially if we believe the causes of war to be related to fundamental properties of politico-social organization. A danger with the European Union may well be that it is a solution to yesterday's problem. And, more to the point, to the extent that it is a solution to yesterday's problem, it may foment tomorrow's problem. To see this, we need to examine the

grounds for thinking that a federation will reduce risk of war among the parties to the federation. We then need to examine the implications of that line of reasoning for the external relations of the more inclusive polity.

### 1.3 Federation as Support for Peace

What reason do we have to believe that confederation will reduce the likelihood of war between the confederating states? Clearly, there is nothing axiomatic about such effects. Civil wars are not unknown, even within federations. And sometimes the reconciliation of a conflict may take the form of creating separate and distinct political units (as in the partitioning of Yugoslavia). Where there are significant ethnic, tribal, linguistic, and/or religious differences among subpopulations, keeping a certain political distance might be thought to be more conducive to peace than political cohabitation. The history of the partition of India and Pakistan, or of Ireland, makes it abundantly clear that there are no simple general rules here. Indeed, federalism is sometimes discussed as one mechanism for building institutional fences between different communities, rather than as a means of bringing different communities together. So we must first be clear as to our meaning of federation in this context. Throughout this chapter—precisely because of our focus on the case of the European Union—we regard federation and confederation as the bringing together of previously distinct political entities—federalism from the bottom up, as it were. Of course, there is also the possibility of the creation of a federal structure from the top down—by partition, separation, or some other loosening of links relative to a unitary structure. We have no desire to argue that all forms of federal structure, whatever their history, are always and everywhere a force for peace, but we do believe that there is a systematic argument to be made for the view that the creation of a larger, more inclusive polity with the relatively complex internal structure that is typical of federal systems may be the more effective means to maintain peace than a divided set of independent polities.

Before sketching the argument, it is worth mentioning two parallel lines of thought, both relevant to the European case, that do not depend on any particular political confederation: one is concerned with economic integration, and the other with military alliances. The economic argument is simply that anything that encourages genuine interdependence, though not necessarily political integration, among countries

will tend to reduce the probability of war between those countries. Thus purely economic integration of the type that reduces the ability of country A to operate without cooperating with country B may be expected to reduce the probability of war between A and B by raising the cost of such war. We take this point but do not rely on it too heavily, since our diagnosis of the expressive nature of the issue underlying the politics of war is such that the true costs of war may be expected to have relatively little impact on the probability of war. Of course, economic interdependence can sometimes be interpreted as economic dependence, which can in turn fuel political antipathy. Nevertheless, if political structures can be found that address the basic issue we identify, we would expect those political effects to be reinforced by the effects of the more general economic integration that can be expected to go alongside political confederation. Similarly, while military alliances can in some cases support peace, there is plentiful evidence that unless the military alliance is firmly grounded in a broader political understanding, it is unlikely to have significant or long-term impact.

In what follows we focus on political integration or confederation rather than on purely economic or military cooperation. We should acknowledge that there exists a considerable literature on the relationships between democracy, federalism, and war. This literature draws on a number of theoretical traditions and provides considerable empirical analyses. In particular, the “correlates of war” program of research represents a major contribution to any understanding of war (for an excellent introduction and survey, see Geller and Singer 1998). Our purpose here is to add a further argument to this literature based on the idea of expressive political behavior.

In developing the idea of political confederation as a means toward peace, the first key issue is one of separating, as far as possible, political decision-making from structures of symbolic or expressive significance. This is what we mean by “taking the heat out of politics.” It is hard to imagine a form of national political competition that does not excite nationalism. If decision-making, however, is shifted to a different level, and particularly one that cuts across national lines, it may be possible to uncouple the practical from the symbolic. For this to be possible, there have to be different levels, and these levels have to be as orthogonal as possible to existing “fault lines” between symbolically significant groups.<sup>9</sup> This idea has two aspects that we should stress: one directly concerns the constitutional design of the structure of government and the principle for allocating decision-making powers to

levels of government, and the other concerns the value of civic engagement in the political process. We will discuss each in turn.

In standard public economics there is a clear approach to the design of federal systems and the allocation of responsibilities to levels of government in a federal structure. The argument is broadly in line with the idea of subsidiarity as developed in the European Union, which indicates that any decision should be made at the lowest level consistent with competence and efficiency. We would suggest that the issue of the institutionalization of peace provides a countervailing argument. One aspect of the standard approach is that decisions should be made by the groups most directly concerned, and that the levels of decision-making should therefore be designed to match natural constituencies of concern. The logic of this recommendation rests heavily on the assumption of instrumental decision-making at each level so that all relevant externalities are internalized. But, as we have already suggested, we do not believe that this assumption is appropriate. Further, if we consider the question from the more expressive/symbolic perspective, we gain a very different view. It is exactly the identification of natural constituencies that raises the problem from this perspective.

At the same time we might question, from the expressive/symbolic perspective, whether the orthodox pattern of decentralization does internalize relevant externalities. If voting is not instrumental by nature, it is not plausible to expect the outcomes of voting to be efficient relative to the underlying interests of the enfranchised citizens. Expressive voting may even introduce additional political externalities of the type already discussed. So the design of a federal system on the basis of recognition of the symbolic/expressive nature of democratic voting may depart sharply from the design that appears optimal under the assumption of instrumental voting.

More specifically, issues that have the potential for exciting symbolic/expressive passions—issues that are “hot”—should be allocated to levels of government, and styles of decision-making, that tend to “cool” such passions. There are a number of possibilities along these lines. The first and most obvious is in the definition of the relevant electorate, but equally we would point to possibilities associated with what might seem at first glance to be less democratically accountable decision methods. The operation of the European Commission, for example, is often criticized for being relatively remote from democratic pressures, but this might be read as an advantage if it serves to insulate decision-making on particularly sensitive issues from the hurly-burly

of politics as usual. In short, a democratic deficit of the type often identified with the operation of European institutions may not be all bad—it may indeed provide a counterweight and offset any overheated democratic enthusiasms at the national level. Equally, indirect forms of election and representation might be used.<sup>10</sup>

Of course, taking the heat out of politics is likely to make politics less engaging. Here we encounter a tension between the idea that politics should be structured to filter out the symbolic/expressive, and the idea that politics should be structured so as to encourage wide and active participation. Our point is simply that participation should not be viewed as an end in itself, and should be a matter of type and quality of participation as well as a matter of sheer volume. The most attractive model of fully participative democracy is that normally discussed under the heading of “deliberative democracy,” where the understanding of democracy is that of a popular debate in which ideas and ideals are openly and impartially examined with the aim of reaching consensus by argument and persuasion. This conception of democratic politics is far removed from the extreme economic model in which individual citizens’ views are taken as fixed, and the object of the political process is to aggregate these views by voting. If political institutions are to play a role in encouraging more deliberative democratic politics, they must be designed with that end in mind. And there is likely to be a trade-off between the quantity of participation and the quality of that participation—not least since in any system of mass participation the incentives to engage seriously with the process will be diluted and rational ignorance will tend to undermine the quality of the participation.

A second key point in support of confederation as a support for peace relates to complexity and the division of sovereignty. This may seem odd since complexity and the division of sovereignty have often been identified as among the chief problems of federalism. For example, Tocqueville famously wrote that: “The most prominent evil of all federal systems is the complicated nature of the means they employ. Two sovereignties are necessarily in presence of each other” (de Tocqueville [1835] 1945, p. 172). He went on to write, “The second and most fatal of all defects, and that which I believe to be inherent in the federal system, is the relative weakness of the government of the union . . . a divided sovereignty must always be weaker than an entire one” (p. 173). And further, “I cannot believe that any confederate people could maintain a long or equal struggle with a nation of similar strength in which the government is centralised” (p. 178).

Note that as Tocqueville was arguing that federal unions might be expected to be relatively weak in military terms, he took “strength” and “weakness” to have a clear military dimension. But note further that he was concerned with the external military strength or weakness of a federal union, and not with its internal properties. By contrast, we are concerned primarily with the question of internal peace—and here the complexity and division of sovereignty seems to be an advantage of federalism, rather than an “evil.” The most direct point here is that any division in sovereignty, and hence in political loyalties, will generally render the idea of military conflict between parts of the federal whole less likely. By definition, there will be areas in which the two potentially conflicting parts actually identify themselves as united, and there will, again by definition, exist political institutions that tie the two parts together and so form natural routes of communication. At the same time the government of each part of the federation will lack the required ultimate political authority or sovereignty. Of course, these results will only be true in a moderately well-functioning federation. It is not difficult to imagine a situation where disputes between parts of a federation reach the point of military conflict and signal the end of the federation. To say that federation cannot prevent all wars is not to say that federation cannot reduce the incidence of wars.

Complexity and the division of sovereignty, and the separation of political decision-making from symbolic fault lines are, then, our two themes. These are the two basic mechanisms by which confederation may hope to achieve a more peaceful outcome for its members. So far we have sketched these ideas in very broad terms, but before going into slightly more detail it is worth re-emphasizing that these ideas should be seen as constitutional principles rather than as principles of policy-making, and that, as constitutional principles, they pull in rather different directions than the more standard set of constitutional principles that informs economic discussions of constitutional and institutional design.

#### **1.4 Institutional Implications for Europe**

In the context of designing the European constitution we want to speculate on the implications of taking seriously our arguments on both the political failure that leads to an exaggerated risk of war and the broad nature of a confederal institutional structure that might mitigate this failure. In so doing, we adopt the method of outlining some institutional arrangements that seem to us to institutionalize peace. We make

no claim that institutionalizing peace is the only purpose of the European Union that should be recognized, and therefore we make no claim that the institutional arrangements that we outline are even close to optimal once all things are considered. But we make no apology for this. Most of the debate on the European constitution proceeds without reference to peace as an objective, and therefore runs the risk of completely ignoring the institutional requirements of peace. In erring in the opposite direction, we aim to slightly redress the balance.<sup>11</sup>

Given the emphasis on peace it is worthwhile to consider aspects of the European constitution that bear directly on matters of defense and security, before considering more general aspects. And here it is particularly useful to begin with the final report on defense from Working Group VIII of the European Convention, 2002. This document sets out recent developments in defense matters at the European level, and makes a number of recommendations to the constitutional convention in relation to defense and security issues. At the Cologne and Helsinki European Council meetings (June and December 1999) the decision was taken to provide the European Union with the capacity for autonomous action, backed by credible military forces, and independently of NATO, so that the European Union could launch and conduct military operations internationally. The European Council also established the post of High Representative to lead EU policy in areas of "flashpoint diplomacy" and European Security and Defense Policy (ESDP). It is particularly notable that all matters relating to the ESDP are ruled out from the possibility of applying qualified majority voting so that all member states retain a veto. The broad thrust of the new recommendations is to further enhance the European role in matters of defense and security, in particular, by expanding the set of "Petersburg tasks" (the set of tasks that may require an EU military force), by extending the role of the High Representative so that he or she can initiate and direct action while reporting to the Council, and by encouraging the use of "constructive abstention" to ensure that the formal requirement of unanimity does not prevent significant groups of member states from acting even where some other member states may not approve.

By these recent developments and proposals, it can be foreseen that in military decision-making the European Union will play a larger role alongside the individual states and NATO.<sup>12</sup> Furthermore it is clear that the mechanism that will enhance the European Union role is relatively remote from popular voting. Indeed, the creation of the High

Representative moves a short distance in the direction of setting up an independent agent whose role might be analogous to that of an independent central banker. By analogy, then, the primary idea is that of setting up an agent who is not directly accountable to an electorate but is instead accountable for the delivery of a specific policy. This independence insulates the agent from political pressures.

All these considerations seem to us to be in line with our general argument in that they shift the debate on military matters away from the natural constituencies, thereby reducing the heat of the political debate. At the same time the complexity of decision-making in the area of defense is increased by ensuring that negotiations at NATO and EU levels are a counterweight to any internal populist pressure within any national government contemplating military action.

Other considerations in this direction can be imagined. Most obvious is the formation of a European military force that stands alongside national military forces and permits the military capacity of individual nations to be reduced. Of course, the tension here is that in creating a strong integrated European military power, one might lessen the probability of war within Europe but risk increasing the probability of war between Europe and an external power. To minimize the probability of war overall, one needs to divide and share the responsibility for military matters in ways that limit national risks without creating a military superstate. But there is yet another facet to this issue. Our diagnosis of the type of political failure that underlies the exaggerated probability of war operates because of the scale of expressive/symbolic commitment that is invested at the national level of political decision-making. A shift of military capacity from the national level to the European level would not necessarily replicate the same problem on a larger stage, unless there is also a shift in expressive/symbolic attachments. To put the point more plainly, an integrated European polity could only suffer from the identified political failure if the European Union comes to occupy a strong place in the expressive/symbolic landscape of its citizens.

Moving outside of the narrowly military area, what more general comments may be made about the design of constitutional structures to institutionalize peace? We identify a number of critical points:

1. To diffuse political pressures, stress the establishment of law, particularly law in relation to individual rights, rather than national or group rights, and the judicial process, rather than the creation of political competition at the European level.

2. To reduce the force of political competition and encourage debate in representative bodies that do not divide along national lines, rather than the empowerment of directly elected politicians.
3. To stabilize political outcomes and reduce the power of any specific group, and divide power across a variety of institutions, with different patterns of representation and different degrees of electoral accountability.
4. To protect smaller nations and minorities and provide an assurance of stability, and use supermajority voting.
5. To counterbalance expressive/symbolic identification at national level and build identification at the European level.<sup>13</sup>

These points all identify measures that either take the heat out of politics or exploit the complexity and divisions inherent in a federation. These points should also be familiar to any observer of the European Union as they are among the features of the European constitution that are most often criticized for limiting the democratic responsiveness of Europe, for institutionalizing a form of lowest common denominator bargaining among member states, and for rendering the European Union intrinsically conservative and bureaucratic. Our view, however, is that these features also promote the institutionalization of peace, which we take to be a vital part of the underlying purpose of the European Union. Any accompanying bureaucracy, conservatism and similar inefficiencies may be a price worth paying for an increased prospect of peace.

A further problem relates to the issue of whether practical measures that take the heat out of politics would be supported in the political arena. This may appear unlikely as politicians would have to give up "hot" issues. Why should national politicians be willing to give up issues that excite national passions? We argue that this may be attractive in the same way that "tying one's hands" in other policy areas may be attractive. Just as politicians have been willing to give up control of monetary policy to an independent central bank because the heat of politics is argued to distort monetary policy decisions, so we would expect other relocations of authority to be achievable. However, we stress that we do not believe that any relocation of authority is possible just because it is desirable. We take seriously the point that any relocation of authority has to be compatible with the incentives faced by the initial holders of political authority, and we recognize that this may affect the range of reforms achieved.

There is also a question of coordination among states. If national governments recognize the value of insulating a particular aspect of policy from the pressures of popular, national politics, why should the relevant institutional solution be European in nature? Why not a plethora of national solutions rather than a coordinated European solution? The answer derives from the explicit recognition that the aim in view—the reduction of the possibility of European war—is essentially inter-national. The payoff to any one member state engaging in the relevant institutional reform depends crucially on the reforms undertaken in other member states.

### 1.5 Concluding Comments

We developed our discussion from a rather different interpretation of the standard quote from Clausewitz on the relationship between war and politics.<sup>14</sup> Rather than treat war as a means by which states might pursue international political ends, we see a potential connection between the mechanics of domestic democratic politics and war. In our view, the nature of democratic political competition results in a political failure that implies an increased risk of war. We suggest that the establishment of the European Union can be understood, in large part, as an attempt to institutionalize peace. Conceptually the European Union is an enterprise that goes far beyond simple economic integration or military alliance. It is an attempt to construct a genuine political counterweight to political failure. The success of this enterprise depends, however, on the details of the European constitution. It is not the case that political integration of any sort will promote peace. The institutional reforms that we suggest are essentially reforms that both reduce the heat of politics and employ relatively complex structures that dissipate power and disassociate it from its natural constituencies. Such reforms will also carry costs. However, if overall costs and benefits are compared to reach a fully rounded evaluation, any institutional arrangement that can offer a small reduction in the probability of war will, in the end, be worthwhile.

We do not suggest that all wars that involve democracies derive from political failings within the democratic process, nor do we claim that the expressive nature of popular voting is the only relevant political failing. We rather want to show that there is good reason to be wary of this particular form of political failure and to take out some institutional insurance. In this sense our argument may be seen as

belonging to the tradition of identifying checks and balances within a political structure. Just as the separation of powers might, under certain circumstances, provide valuable checks on the powers of individual political agents, so might a supranational European confederation of a type that is not too directly democratic provide a valuable check on the operation of democracy at the national level.

In drawing to a close, we want to return briefly to two issues. The first is the question of whether reduction of the probability of war within the Union might simply shift the threat to another level. We doubt this. Much of the work that is being done to institutionalize peace in the European Union is being done by dividing and separating powers, and in particular, by separating military authority from arenas where political competition excites certain expressive or symbolic passions. It is not simply that a militarily strong Europe will counterbalance the warring tendencies of individual European nations. If this were all that was going on, we would agree that there might be an increased threat of external wars. But even that would only be attempted if political processes at the European level generate the same expressive and symbolic pressures as they do at national levels. In other words, if both military decisions and expressive/symbolic identification are shifted to the European level, then we might expect to reduce the threat of internal wars but increase the threat of external wars. Now, if we can rub out the connection between military decision-making and expressive/symbolic identification, the risk of war might be reduced overall.

A final issue we raise relates to the popular desire for autonomy. It is a commonplace to observe that the first call of a self-identified group within a larger polity is often for autonomy or self-determination. At the extreme, this amounts to a claim of secession. Moves to autonomous substates might be seen as the opposite of the confederation process with which we have been concerned. The point is that the political appeal of autonomy may be another example of the expressive/symbolic nature of political behavior, but it does lead to a fragmentation of states by secession or partition that might be associated with the risk of war. However, autonomy is a quality that can be accommodated by an appropriate federal structure.<sup>15</sup> The peace-enhancing properties of bottom-up federalism that we have discussed in the European context might also be available to top-down federalism of the sort that might be applicable in circumstances such as those seen in the former Yugoslavia. However, the necessary institutional structures must be put in place. Federalism alone is not enough.

## Notes

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1. Many think it is a mercantilist myth that the case for freer trade depends on countries matching the efforts of each other. Most of the benefits of liberal trade policy accrue to the country that initiates the policy; hardly any go to that country's trading partners. Put another way, tariffs are essentially redistributions within a given polity, and not between that polity and others.

2. See <http://european-convention.eu.int>.

3. See CONV 528/03 Annex 1 Article 3, paragraph 1.

4. Bueno de Mesquita (1980, 1981) presents a model of this general type in which states act as if they are individually rational agents. Decision-making then hinges on attitudes toward risk rather than a particular game structure. For critical discussion, see Majeski and Sylvan (1984).

5. The evidence and a range of explanations are reviewed by Geller and Singer (1998).

6. To explore the opinion poll analogy a bit more, studies of behavior in certain circumstances imply nothing for behavior in other circumstances. We believe, however, that opinion polls are likely to yield quite accurate results precisely because voting and opinions are both essentially expressive activities. Questions about purchasing behavior or about changes in one's pattern of consumption if prices change are likely to produce less reliable results. Then there are questions that have some moral significance where the answers are likely to be downright misleading. The use of questionnaires to estimate alcohol consumption, or the extent of tax evasion, or domestic violence is unreliable for precisely this reason. Societal attitudes toward the activity intervene to give respondents an incentive to misrepresent their practices. Wherever practice and values part, questionnaire results are likely to reveal more about values than they do about practice, even though practice is the subject of the inquiry.

7. The tension between the expressive and instrumental voting also applies to the question of strategic voting. The standard argument supporting strategic voting is instrumental: it relies on the individual voter's ability to see through the structure of the game and take sophisticated decisions that influence the outcome. Persson and Tabellini (1992) argue that voters may vote strategically to ensure that an outcome reflects their preferences even when the policy process is somewhat independent of electoral pressures. However, this line of argument is less forceful in a setting where instrumental voting is not assumed to be the general rule.

8. Not all instances where symbolic and instrumental considerations diverge involve political failure. They may even be instances of emphatic political success. The veil of ignorance familiar from the work of Rawls and Buchanan often commends itself because the "preferences" to which it gives rise are less "distorted" by (excessive) self-interest. The veil of insignificance characteristic of large-number collective action has this same feature: the weight of rational self-interest is radically diminished, narrow selfishness is moderated, and voters are free to entertain great dreams. Not all of their desires will be disasters in the making. But nothing in the exercise of collective choice can ensure that we avoid the disasters in the making.

9. A similar point is made by Hechter (2000) who points to decentralized decision-making in multinational states as a means of reducing the demand for nationalism. He

suggests that too little decentralization tends to incite rebellion against the center and that too much decentralization tends to fragment the state.

10. As might other institutional arrangements. One possibility here is a functional overlapping competing jurisdictions (FOCJ) structure, as advocated by Bruno Frey and others (see Frey and Eichenberger 1999). Overlapping jurisdictions can reduce the correlation between jurisdictional boundaries and symbolic communities, while the functional nature of jurisdictions can “cool” politics by shifting attention to more practical issues.

11. For a somewhat related discussion of the institutional means of mitigating ethnic conflict, see Grofman and Stockwell (2000).

12. Eleven of the current European member states are also members of NATO. Among the set of EU candidate countries, four are members of NATO and others are in the process of joining.

13. Of course, it is a matter of balancing expressive identification at national and European levels. Too strong a European identity can also cause problems. At the moment, however, it appears to us that the appropriate balance is more Europeanism and less nationalism.

14. The full quote is “war is not merely a political act but a real political instrument, a continuation of political intercourse, a carrying out of the same by other means” (Clausewitz [1837] 2000, p. 280).

15. Increased pressure for secession may be one price paid for institutional reforms of the type advocated here. A type of equilibrium may emerge between the extremes of self-determining nations at high risk of war and a fully coordinated super state at high risk of civil war in support of claims of secession.

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