

'Europe's existential lie' from the Süddeutsche Zeitung (1 February 2000)

Caption: On 1 February 2000, the German daily newspaper Süddeutsche Zeitung comments on the debate on the Charter of Fundamental Rights of the European Union and the Treaty establishing a Constitution for Europe.

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Europe's existential lie

by Stefan Ulrich

What's going wrong in Europe? The EU is going from success to success. In the space of ten years it has completed the internal market, established the euro and taken in ten erstwhile enemies from the East. The continent is growing together, a trend which has long since overstepped the narrow confines of the economy. Today, 380 million people live in an area marked by prosperity and security, the wonder and envy of the world. Tomorrow, that number will have risen to half a billion. And yet, everywhere there is dissatisfaction. Europe's citizens train a watchful eye on 'the people in Brussels'. Europe's coming-together, this 'wonderful collective adventure', to quote Jacques Delors, is generating more fear than joy. Why is that? And above all: What can be done about it?

These are questions which, as from today, will be addressed by 62 politicians assembled under the chairship of Roman Herzog, the former FRG President. The EU Heads of State or Government have tasked them with drawing up a Charter of Fundamental Rights in order to help Europeans overcome their anxieties about Europe. But that will not be enough. For the Charter, which initially will not be binding, goes only part of the way and the Member States do not wish to go the rest. To do so would be to endow the European Union with a Constitution. And that is something the Member States fear.

The very idea of such a Community Constitution is anathema to many, and not only in countries such as the United Kingdom which lay particular emphasis on the issue of their sovereignty. Some say a Constitution is superfluous since the EU is already constituted. Others believe a Constitution is not an option since the EU is not a state.

The former argue that all the necessary rules are already to be found in the Community's founding treaties - from Rome to Amsterdam, taking in Maastricht on the way. Those treaties defined the requisite institutions, competences and procedures. They add that the European Court of Justice has already developed a system of fundamental rights. What more could the citizen want? The sheer arrogance of it! So people are supposed to tease their fundamental rights out of hundreds of tortuous judgments. And they are expected to sift out of a chaotic mishmash of treaties, each successively amending or expanding on what has gone before, those principles with a claim to constitutional status.

The fact is that today even lawyers find it increasingly difficult to find their way round European law. For the average citizen, the treaties conceal more than they reveal. A Constitution, on the other hand, could at long last bring clarity as to rights and duties in the Union. It could place limits on Europe and bring its shortcomings to light in uncompromising fashion.

The second group opposing such a Constitution will object that a Constitution presupposes the existence of a state. The Union, however, is not a state but an association of sovereign states. Nor can it become a state in the absence of a homogeneous people and common language and hence without the benefit of a shared political debate. What this line of argument comes down to is: the governments are to remain the masters of Europe's destiny, not its peoples. They decide whither we are bound. The citizens, for their part, must make do with an EU Parliament which doesn't even have the right to initiate legislation. This may well be the source of the unease with which Europeans view Europe. People realise that they have precious little influence over the course of events in the Union. They are, at the same time, conscious that 'Brussels' is acquiring ever more power over them, and intervening ever more powerfully in their daily lives. There are many who suspect the EU of developing surreptitiously into a tentacular superstate, without a Constitution, without any genuine separation of powers and lacking in democracy. A superstate in which the bureaucrats rule supreme and the citizens stand in their thrall.

These concerns are by no means unfounded. For how does the citizen recognise the state? By its borders, its currency, its army, its police and its laws. And what is happening? The EU's internal borders are coming down while its external borders are being reinforced. The new currency is called the euro. Europe's armies are coming together in the framework of a common defence policy. Europol is the basis for a European

police force. And what about the laws, the veritable drive-belts of the state apparatus? Some two-thirds of all laws that concern us today are shaped, not in Berlin, but in Brussels. In other words: the EU acts as a state even if the Member States prefer not to notice it.

It is true that in terms of constitutional theory the EU may still be regarded as a 'sui generis construct'. But from the point of view of its citizens, it is increasingly assuming the role of the state. In this way the fiction that the Union cannot be a state is becoming an existential lie for Europe. This existential lie is being used to hold Europe's citizens at a distance from the decisions that are shaping the unification process. That lie leaves Europe locked in a semi-democratic condition, one which it would tolerate in none of its Member States. If Haider's Austria were to have been given a state structure on the EU model it would not have been any more the loser.

Something is going wrong in Europe. A state is coming into being and no-one wants to admit it. It may however be that the debate on the Charter of Fundamental Rights will bring one point home: Europe needs a Constitution if it is at last to acquire meaning for its citizens.