

# Constitutional Implications of the Treaty of Lisbon

National Platform

“The Constitution is the capstone of a European Federal State.”

Guy Verhofstadt, Belgian Prime Minister,  
*Financial Times*, 21 June 2004



“The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe .” (emphasis added)

*Schumann Declaration*, 9 May 1950,  
on the formation of the European Coal and Steel Community



“From the inside it looks like an arrangement based on Treaties between States. From the outside it looks like a State itself.”

Jens-Peter Bonde MEP,  
*From EU Constitution to Lisbon Treaty*; [www.bonde.com](http://www.bonde.com)



“The State may ratify the Treaty of Lisbon signed at Lisbon on the 13th day of December 2007, and may be a member of the European Union established by virtue of that Treaty . No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State that are necessitated by membership of the European Union, or prevents laws enacted, acts done or measures adopted by the said European Union or by institutions thereof, or by bodies competent under the treaties referred to in this section, from having the force of law in the State.” (emphasis added)

*28th Amendment of the Constitution Bill, 2008*  
(what the people will be voting on in June)

**1. The Treaty of Lisbon is quite different from previous European Treaties, for it would establish a legally quite new EU in the constitutional form of a supranational European Federation. It would thereby revolutionise the constitutional and political order of the Union itself and its Member States.**

Implicit in the first sentence quoted above from the Irish Government's 28th Amendment of the Constitution Bill, which the people will be voting on in June, is the fact that the Lisbon Treaty would establish a constitutionally quite new European Union which would be legally and politically very different from what we know as the "European Union" today.

The proposed constitutional amendment refers to "*the European Union established by virtue of that Treaty*", namely the Treaty of Lisbon. This post-Lisbon Union would clearly be a different European Union from that which stems from the 1992 Maastricht Treaty on European Union, which is the EU that we are at present members of.

The "*European Union established by virtue of that Treaty*", which the proposed 28th Amendment of the Constitution Bill refers to, corresponds to the Union which was referred to in the first sentence of Article I-1 of the *Treaty Establishing a Constitution for Europe*, which the peoples of France and Holland rejected in their 2005 referendums. That sentence stated: "*This Constitution establishes the European Union*". Both the EU Constitution and the Treaty of Lisbon which succeeds it would give the constitutional form of a supranational Federation to the legally quite new European Union which they each would establish if ratified.

Explaining to the Irish people the difference between the post-Lisbon and the pre-Lisbon European Union is the most important task facing those who seek to make voters aware of the constitutional and political significance of the issue they will be voting on in the Lisbon Treaty referendum. The difficulty of the task is compounded by the fact that the same name, "the European Union", is being used for two entities, the pre-Lisbon Union and the post-Lisbon Union, which constitutionally and politically would be profoundly different from one another.

Lisbon would give the legally new Union which it would establish a *de facto* supranational Federal Constitution that would be virtually identical in its legal effects to the *Constitution for Europe* which the French and Dutch voted No to. The approval and ratification of the Lisbon Treaty therefore would usher in a constitutional and political revolution in what we call the European Union today and in the national constitutional order of the EU's Member States, including Ireland.

The Lisbon Treaty would bring about this constitutional revolution by amending fundamentally the two existing European Treaties, the *Treaty on European Union* (TEU) and the *Treaty Establishing the European Community* (TEC). The former would retain its name, while the latter would be renamed the *Treaty on the Functioning of the European Union* (TFEU).

These two amended Treaties would then become the *de facto* Constitution of the new European Union which they would constitute or establish, although they would not be called a Constitution. The EU would thus be given a Constitution indirectly rather than directly, as had been proposed in the original *Treaty Establishing a Constitution for Europe*.

The provision of the Lisbon Treaty that "*The Union shall replace and succeed the European Community*" (Art. 1, amended TEU) makes clear that the post-Lisbon Union would be quite a new entity, as the European Community of which our countries are all currently members would cease to exist.

Member States would retain their national Constitutions post-Lisbon, but they would be subordinate to the new Union Constitution, as the second of the two sentences quoted above from the 28th Amendment of the Constitution Bill makes absolutely clear. As such the Irish and other Member State Constitutions would no longer be constitutions of sovereign States, just as the various local states of the USA retain their constitutions although they are subordinate to the Federal USA Constitution.

The new European Union's powers would be conferred on it by its 27 Member States, for they would voluntarily have agreed to obey the EU's superior authority in the policy areas surrendered, which nowadays cover much the greater part of government. Where else after all could the new Union obtain its powers?

This so-called "principle of conferral" is normal in all classical "bottom-up" Federations, such as the USA, 19th Century Germany, Switzerland, Canada or Australia. These contrast with Federations which have been established by unitary States assuming federal form, e.g. post-World War 2 Germany, Russia, India, Nigeria etc., which might be referred to as "top-down" Federations.

The remaining governmental powers, which have mainly to do with the traditional social services and the taxation needed to finance them, would remain with the Member States. State sovereignty would be divided between the Federal and local state levels, as is normal in Federations. Similar provisions to Lisbon's "principle of conferral" are to be found in the American Constitution and that of other Federal States.

## 2. The Treaty would empower the post-Lisbon European Union to act as a State vis-à-vis other States

To understand the change that would be introduced by the Lisbon Treaty one needs to appreciate that what we call the European Union today is not a State. It is not even a legal or corporate entity in its own right, for it does not have legal personality.

The name "European Union" at present is the descriptive legal term for the totality of relations between its 27 Member States and their peoples. Article 1 of the 1992 *Maastricht Treaty on European Union*, which set up the EU that we are members of at present, makes this quite clear when it states that "*the Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise relations between the Member States and between their peoples.*"

These relations cover both the "European Community" area, where supranational European law is operative, and the "intergovernmental" areas of foreign and security policy on the one hand and justice and home affairs on the other, where Member States freely cooperate with one another on the basis of keeping their sovereignty and where European laws do not apply. These different areas – or "pillars" in EU terminology – together constitute what we call the European Union today.

The Lisbon Treaty would change this situation fundamentally by creating a constitutionally and legally quite new EU, while retaining the same name, the "European Union". Unlike the present European Union, this constitutionally new EU would be separate from and superior to its Member States, just as the USA is separate from and superior to Massachusetts or Kansas, or as Federal Germany is to Bavaria or Bremen.

This post-Lisbon European Union would sign treaties with other States in all areas of its powers and conduct itself as a State in the international community of States. It would speak at the United Nations on agreed foreign policy positions; just as in the days of the Soviet Union the USSR had a UN seat while Russia, Ukraine and Byelorussia had UN seats also. Member States would be obliged to support the Union's foreign and security policy "actively and unreservedly in a spirit of *loyalty* and mutual solidarity" (Art.24.3 amended TEU) (emphasis added). The word "*loyalty*" makes clear the constitutional relations involved.

The Lisbon Treaty would also give the EU a political President, a Foreign Minister – to be called a High Representative for Foreign and Security Policy – a diplomatic corps and a Public Prosecutor. The new EU would accede to the European Convention on Human Rights (ECHR), as Ireland and the other European States have already done, including States outside the EU.

The Lisbon Treaty also sets out the principle of the primacy and superiority of the laws of the new Union over the laws and Constitutions of its Member States. *Declaration 17 concerning Primacy*, which is attached to Lisbon,

makes clear that EU law would have primacy over and be superior to the Irish Constitution and laws in any case of conflict between the two.

This has not been stated in a European Treaty before. Whereas the *Treaty Establishing a Constitution for Europe* did state this explicitly in an article in the main body of that Treaty, the Lisbon Treaty does it by referring in this Declaration 17 to the case-law of the European Court of Justice, which over the years has asserted the principles of (a) the superiority of EU law, (b) its direct effect in the territory of its Member States even if it has not been formally put through their National Parliaments, and (c) the constitutional character of the legal order from which European law emanates.

European law and national law deal with different areas and matters, as is normal in Federal States like the USA, Germany, Switzerland, Canada or Australia. Lisbon would give the EU the power to make supranational laws that are binding on us in many new areas and would take that power away from the Irish Dáil and Seanad and from Irish citizens who elect them. The new Union would make the majority of laws for its Member States each year. Under Lisbon it would get further power to make laws by qualified majority voting in relation to over 30 new policy areas. It would also be given new power to take decisions in relation to as many specific issues. Together there would be some 68 areas or issues in all where individual Member States decide matters now and where under Lisbon they would lose their veto or their right to decide.

### **3. The Treaty would make us all real citizens of this new European Union, instead of us continuing as notional or honorary European “citizens” as at present. In constitutional terms this would give the post-Lisbon Union a new source of democratic legitimacy**

One can only be a citizen of a State, and all States must have citizens. Citizenship of the European Union at present is stated to “complement” national citizenship (Art.17 TEC), the latter being clearly primary, not least because the present EU is not a State, or even a corporate entity which can have individuals as members. Our “complementary” citizenship of the present EU is essentially notional or honorific.

By transforming the legal character of the European Union, the Lisbon Treaty would simultaneously transform the meaning of Union citizenship. The Treaty would replace the word “complement” in the sentence, “*Citizenship of the Union shall complement national citizenship*”, so that the new sentence would read: “*Citizenship of the Union shall be additional to national citizenship*” (Art.9, TEU, Art.20 TFEU). This would not replace our national citizenship, but would for the first time make us real citizens of a real EU on top of our national citizenship.

This would be a real dual citizenship – not of two different States, but of two different levels of one State – as is normal in Federations which are established from the bottom up by constituent states surrendering their sovereignty to a superior entity, as has been the case historically with the USA, 19th Century Germany, Switzerland, Canada and Australia.

This development would give the 500 million inhabitants of the present EU Member States a real separate citizenship from citizenship of their national States for the first time. It would give a treble citizenship to citizens of the individual Länder within Federal Germany for example.

The rights and duties attaching to this citizenship of the new Union would be superior to those attaching to citizenship of one’s own national State in any case of conflict between the two, because of the superiority of EU law over national law and constitutions. The Preamble to the *Treaty on European Union* refers to the aim of “*establishing a citizenship common to nationals of their respective countries*”.

As most States recognise that one can only have a single citizenship internationally, it is quite likely that over time one’s European Union citizenship would tend to be regarded by other countries as one’s primary and internationally definitive citizenship.

Lisbon would insert a new Article 10 into the amended Treaty on European Union: “*The functioning of the Union shall be founded on representative democracy. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments ...*” This provision clearly sets up an alternative source of democratic legitimacy which challenges the right of national governments to be the representatives

of their electorates in the EU. Contrast this Lisbon Treaty formulation with what is stated to be the foundation of the present European Union (Art.6, current TEU): *“The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.”*

It seems fair to say that Lisbon marks a qualitatively new stage in the gradual evolution of institutional structure away from Europe's Nation States, which slowly but surely emphasises the idea of democratic legitimacy being developed independently of the Member States by EU-level institutions.

The concept of a direct democratic citizens' mandate for the new post-Lisbon European Union is reinforced by the encouragement which the same Article gives to the development of European-level political parties which would be part funded by the EU Commission. These are stated to *“contribute to forming European political awareness and to expressing the will of citizens of the Union.”* (Art.10.4, amended TEU). It is also emphasised by the obligation imposed on the EU Commission to bypass national governments and *“maintain an open, transparent and regular dialogue with representative associations and civil society”* (Art.11.2 TEU).

**4. The enormity of the constitutional change proposed by Lisbon may not be appreciated because the same name – the “European Union” – would be used before and after the Treaty would come into force, and the notion of EU “citizenship” which was introduced by the 1992 Maastricht Treaty would be retained, although the Lisbon Treaty would change fundamentally the legal and constitutional nature of the Union itself, its Member States and the character and implications of EU citizenship**

The change in the constitutional and political nature of the Union, its Member States and its citizens would be made in four legal steps which are set out in the Treaty of Lisbon:

(a) Lisbon would establish a European Union with full legal personality and a fully independent corporate existence in all Union areas for the first time, so that the post-Lisbon Union can function as a State vis-à-vis other States and in relation to its own citizens (Art. 47 TEU, cf. Art.281 TEC);

(b) This new European Union would replace the existing European Community and take over all of its powers and institutions. It would take over as well the “intergovernmental” powers over foreign policy and security, as well as crime, justice and home affairs, which at present are outside the scope of European law, leaving only aspects of the Common Foreign, Security and Defence Policy outside the scope of its supranational power (Title 5, Art.24, amended TEU);

(c) It would thereby give a unified constitutional structure to the new Union which Lisbon would constitute or establish. The European Community would disappear and all spheres of public policy would come within the scope of supranational EU law-making either actually or potentially, as in any constitutionally unified Federation (Arts.1-6 TFEU, Art.4.1 TEU).

One says “potentially” because further inter-State treaties would be required to transfer the minority of law-making powers still remaining with the Member States to the new Union in the future, or to shift powers back from the supranational level to the Member States – something which has never happened up to now. Supranational legislative acts would not yet be adopted in the sphere of Common Foreign and Security Policy and a new treaty would be needed to change that. However the Commission, a key supranational body, would through the High Representative/Foreign Minister proposed in the Lisbon Treaty gain the right of initiative in the foreign policy field, so that even in the light of Art. 31.2 TEU a *de facto* “supranationality” would be attained there.

(d) Lisbon would make us all real citizens of the new Federal Union which the Treaty would establish (Art.9 TEU, Art.20 TFEU). with all the implications of that for downgrading our present personal status as citizens of a sovereign Irish Nation State and superseding it by citizenship of a component state of a supranational European Federation, of which we would also be made real citizens for the first time.

## 5. Lisbon would create a Union Parliament for the Union's new citizens

The Lisbon Treaty would make Members of the European Parliament, who at present are "*representatives of the peoples of the Member States*", into "*representatives of the Union's citizens*" (Art.14.2, amended TEU; cf. current Art.189 TEC). This illustrates the constitutional shift which the Treaty would make from the present European Union of national States and peoples to the new Federal Union of European citizens and their national states – the latter being effectively henceforth reduced constitutionally and politically to provincial or regional status within the new Union.

The role of the European Parliament – which was first introduced as a modest check on the EU Executive – has been elevated in successive EU Treaties. These direct representatives of EU citizens now have co-decision-making powers that put the EU Parliament on virtually equal terms with the Member Nation States in ever more areas – including electing the President of the Commission as presented to it by the European Council. The shift of EU authority as arising directly from EU citizens rather than from the Member Nation States is reflected in the Lisbon Treaty when it states unequivocally that: "*The Commission, as a body, shall be responsible to the European Parliament*" (Art.17.8 TEU). The European Parliament approves the Commission members en bloc and may force their collective resignation by a vote of censure.

By contrast the Council of Ministers – consisting of representatives of the Member Nation States – has shifted over time from being the directing authority of the EU where the Member States acted largely by unanimous agreement, to being merely a "second chamber" of national representatives casting votes on EU legislation proposed by the Commission, predominantly through a majority voting procedure.

## 6. Lisbon would create a political Government of the new Union

The Lisbon Treaty would turn the European Council of Prime Ministers and Presidents into an “institution” of the new Union (Art.13, amended TEU), so that its acts or its “failing to act” would, like all other Union institutions, be subject to legal review by the EU Court of Justice (Arts.263-265, TFEU)

Legally speaking, these summit meetings of the European Council would no longer be “intergovernmental” gatherings of Prime Ministers and Presidents outside supranational European structures. As part of the new EU’s institutional framework, the Prime Ministers and Presidents would instead be constitutionally required to “*promote the Union’s values, advance its objectives, serve its interests*” and “*ensure the consistency, effectiveness and continuity of its policies and actions*” (Art. 13.1, amended TEU). They would also “*define the general political direction and priorities thereof*” (Art.15.1, amended TEU).

As an Institution of the new Union, the European Council of Prime Ministers and Presidents would, for example, be in principle open to direction from the European Court of Justice to take steps to harmonise company taxes that constituted a “*distortion of competition*”, something which at present requires unanimity, if they were slow or reluctant to do this (Art.113 TFEU), or if they failed to take steps to ensure that the new Union’s “own resources” were adequate to meet its objectives (Art.311 TFEU).

The European Council would thus become in effect the Cabinet Government of the new Federal EU, and its individual members would in constitutional terms be primarily obliged to represent the Union to their Member States rather than their Member States to the Union.

## 7. Lisbon would create a new Union political President

The federalist character of the European Council “summit” meetings in the proposed new Union structure is further underlined by the provision that would give the European Council a permanent political President for up to five years – two and a half years renewable once (Art.15.5, amended TEU).

There is no gathering of Heads of State or Government in any other international context which maintains the same chairman or president for several years, while individual national Prime Ministers and Presidents come and go. The federalist character of the new Union President is emphasised also by the Treaty provision which forbids that person from holding any national office and which lays down that he/she shall “*ensure the external representation of the Union*” (Art.15.6, amended TEU) .

It is part of the federalist evolution of the Union that the President of the European Council, the quarterly “summit” meetings of Member State Heads of State or Government, becomes no longer a rotating Head of Government, but a permanent EU official. If the President plays this role effectively – including setting the agenda for legislation and representing the EU on the international stage – he or she is bound to assume increasing status and importance. As a result it would not be surprising if in due course there were suggestions that the President should be directly elected by EU citizens, as France’s President Sarkozy has already urged.

## 8. Lisbon would endow the new Union's citizens with a code of civil rights

All States have codes setting out the rights of their citizens. The EU Charter of Fundamental Rights would be that. It would be made legally binding by the new Treaty and would "have the same legal value as the Treaties" (Art. 6.1, amended TEU) . This further embeds the concept that EU citizens have rights and responsibilities defined by the EU itself which transcend those of their national citizenship. Indeed it embodies the concept that the EU determines and is the guarantor of those rights across national boundaries.

The Charter is stated to be binding on the Union's own institutions and on Member States in implementing Union law (Charter of Fundamental Rights, Art. 51). This limitation to EU law and to the EU institutions is unrealistic however, because:

(a) the principles of primacy and uniformity of Union law mean that Member States would not only be bound by the Fundamental Rights Charter when implementing EU law, but also through the "*interpretation and application of their national laws in conformity with Union laws*" (v. ECJ judgements in the *Factortame*, *Simmenthal* and other law cases); and because

(b) the Charter sets out fundamental rights in areas where the Union has currently no competence, e.g. outlawing the death penalty, asserting citizens' rights in criminal proceedings and various other areas.

Making the EU Charter of Fundamental Rights legally binding would give a new and extensive human and civil rights jurisdiction to the EU Court of Justice and would make that Court the final body to decide what people's rights are in the vast area now covered by European law, as against national Supreme Courts and the Court of Human Rights in Strasbourg – the latter Court serving Ireland and all other European States, not just the EU members – which are our final fundamental rights Courts today.

If Lisbon is ratified it is only realistic to expect that the EU Commission will in time come to propose European laws to ensure the uniform implementation and guarantee of the rights provisions of the Charter throughout the Member States. The citizens of the new Union will surely demand no less. American constitutional history provides ample evidence of the radical federalising potential of the fundamental rights jurisdiction of the US Supreme Court.

## 9. Lisbon makes National Parliaments subordinate to the new Union

The Treaty underlines the implicitly subordinate role of National Parliaments in the institutional structure of the new Union by stating that “*National Parliaments contribute actively to the good functioning of the Union*” by various means which are set out in Article 12, amended TEU.

Under the pretext of enhancing the role of National Parliaments, the Lisbon Treaty actually institutionalises their subservience by defining such a limited role for them in the new Union's structures. National Parliaments must be informed of and may scrutinise draft EU legislative acts, but while the Commission is required to review the legislation if a third or more of National Parliaments object, the Commission can then decide to continue with the legislation unamended – with its decision confirmed by the normal QMV procedures.

Ultimately it is the EU itself, through the Court of Justice, which has the final right to arbitrate on claims of subsidiarity infringement (*Protocol on Subsidiarity and Proportionality*, Article 7). This provision of the Treaty permitting National Parliaments in effect to complain to the Commission, is small compensation for the loss of democracy involved by the loss of some 68 vetoes by National Parliaments as a result of other changes proposed by the Lisbon Treaty. National Parliaments have in any case already lost most of their law-making powers to the EC/EU. The citizens who elect them have lost their powers to decide these laws also.

## 10. Giving the new Union self-empowerment powers

These are shown by:

(a) the enlarged scope of the *Flexibility Clause* (Art.352,TFEU), whereby if the Treaty does not provide the necessary powers to enable the new Union attain its very wide objectives, the Council may take appropriate measures by unanimity. The Lisbon Treaty would extend this provision from the area of operation of the common market to all of the new Union's policies directed at attaining its much wider post-Lisbon objectives. The Flexibility Clause has been widely used to extend EU law-making over the years;

(b) the proposed *Simplified Treaty Revision Procedure* (Art.48, amended TEU), which would permit the Prime Ministers and Presidents on the European Council unanimously to shift Union decision-taking from unanimity to qualified majority voting in the *Treaty on the Functioning of the Union*, where population size would become the decisive criterion in European law-making; and

(c) the several “*passerelles*” or “*ratchet-clauses*”, which would allow the European Council to switch from unanimity to majority voting in certain specified areas, such as judicial cooperation in civil matters (Art.81.3 TFEU), in criminal matters (Art.83.1 TFEU), in relation to the EU Public Prosecutor (Art.86.4 TFEU) and the Multiannual financial framework (Art.312.2 TFEU).

## Conclusion

It is hard to think of any major function of a sovereign State which the new European Union would not have if the Lisbon Treaty were to be ratified. The main one would seem to be the power to make its Member States go to war against their will. The Treaty does however provide that the EU may go to war while individual Member States may “constructively abstain” (Arts.42-46, amended TEU).

The Treaty also contains a mutual defence clause (Art.42.7, amended TEU). This commitment to a “mutual defence” in the EU is to be distinguished from an obligation to participate in an EU “common defence”, viz. a common European army, which Art.42.2 lays down that the “progressive framing of a common Union defence policy *will lead to*”.

While Article 42.7 would commit Ireland to mutually defending other EU States if they should be attacked, participating in a common European army, with joint officers on the lines of the current Franco-German brigade, would seem to be precluded by the Irish constitutional amendment which was adopted in 2002 to enable the Nice Treaty to be ratified (the 26th Amendment to the Constitution Bill). The Irish Government is taking this out and putting it back in again by means of the 28th Amendment of the Constitution Bill, presumably to give the impression that it is doing something new to meet public concerns over this aspect of the Lisbon Treaty.

The obligation on the Union to “*provide itself with the means necessary to attain its objectives and carry through its policies*” (Art. 311 TFEU), which means raising its “own resources” to finance them, may be regarded as conferring on it wide taxation and revenue-raising powers. This Article empowers the new Union to “*establish new categories of own resources*” (Art.311 TFEU) and in effect to endow itself by means of any tax, so long as the Council of Ministers agrees that unanimously. Currently public expenditure and the taxation measures needed to finance it remain overwhelmingly at National State level. This is because such social services as health, education, social security and public housing, as well as policing and public transport – the government functions which cost most money – are still mainly at this level. That too is normal in Federations like the USA, Germany etc.

However the post-Lisbon European Union would have its own government, with a legislative, executive and judicial arm, its own political President, its own citizens and citizenship, its own human and civil rights code, its own currency, economic policy and revenue, its own international treaty-making powers, foreign policy, foreign minister, diplomatic corps and United Nations voice, its own crime and justice code and Public Prosecutor. It already possesses such normal State symbols as its own flag, anthem, motto and annual official holiday, Europe day, 9 May.

As regards the State authority of the new Union, this would be embodied in the Union' s own executive, legislative and judicial institutions: the European Council, Council of Ministers, Commission, Parliament and Court of Justice. It would also be embodied in the Member States and their authorities as they implement and apply EU law and interpret and apply national law in

conformity with Union law. Member States would be constitutionally required to do this under the Lisbon Treaty. Thus EU "State authorities" as represented for example by soldiers and policemen patrolling our streets in European Union uniforms, would not be needed as such.

Allowing for the special features of each case, all the classical Federal States which have been formed on the basis of power being surrendered by lower constituent states to a higher Federal authority have developed in a gradual way, just as has happened in the case of the European Union. The USA, 19th century Germany, Switzerland, Canada and Australia are classical examples. None of these came into the world as fully-fledged sovereign States. Indeed the EU has accumulated its powers much more rapidly than some of these Federations – in the short historical time-span of some fifty years.

However, the key difference between these classical Federations and the new European Union is that the former, once their people had settled, share a common language, history, culture and national solidarity that gave them a democratic basis and made their State authority popularly legitimate and acceptable.

All stable and long-lasting States are founded on such communities, where people speak a common language and mutually identify with one another as one people – a collective "We". Because of this mutual identification and solidarity, minorities are willing freely to obey majority rule because they regard the majority as "their" majority. Likewise majorities are willing to respect minority rights because they attach to "their" minority. In the European Union however there is no European people or "demos" of this kind.

The Treaty of Lisbon is an attempt to construct a highly centralised European Federation artificially, from the top down, out of Europe's many nations, peoples and States, without their free consent and knowledge. If there is to be a European Federation that is democratically acceptable and politically legitimate, the minimum constitutional requirement for it would be that its laws would be initiated and approved by the directly elected representatives of the people either in the European Parliament or the National Parliaments. Unfortunately, neither the Lisbon Treaty nor the EU Constitution which it would establish contain any such proposal.

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17 March 2008