

New Constitution Is 'One Big Time-Bomb'

by Gabriele Liebig

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Prof. Dr. Hans R. Klecatsky teaches constitutional law at the University of Innsbruck. From 1966-70, he served as Austria's Justice Minister. He is a highly regarded expert in the field of constitutional law, and over many decades has lectured and published books on the subject. He is also an experienced politician, having, among other things, served as Justice Minister of the Republic of Austria. In early October, we at *Neue Solidarität* asked him for his evaluation of the so-called "EU Constitutional Treaty," which virtually all European politicians have been praising in public, while their actual views are in fact quite different.

Klecatsky believes that the entire "EU Constitution" project is a "strictly virtual endeavor, which has no chance of ever becoming political reality"—all the more so, because some member countries have yet to hold referendums on the question, not to mention the smouldering dispute over Turkey's entry into the Union. It seems to him to be a huge "deception maneuver," to tell people that "We're working on a big project, and then everything will go better. But that can't possibly happen: The whole thing is much too arcane, and is completely unrealistic from a juridical, economic, and political standpoint."

The Austrian professor is an advocate of European integration of the type which de Gaulle, Adenauer, and de Gasperi set into motion in the 1950s: the European Coal and Steel Community, Euratom, the other European communities, and the gradual growing together of Europe into an alliance of nation-states. "But the Maastricht Treaty represented a turning away from what de Gaulle and Adenauer wanted," Klecatsky points out. And indeed, by and large, we agree with him about the 1991 Maastricht Treaty, which brought us not only the euro, the European Central Bank, and the insane economic stabilization criteria that have sabotaged all stratagems for developing the real economy, from the Delors Plan to the Tremonti Plan, but which also portend an orientation toward the creation of a single, unified European federal state.

And on top of that, over the past few years we have had this miserable discussion over a constitution, for which the

Germans are largely to blame: "The concept of a constitution, is a concept of the state. The Germans were the ones who have been pushing this. The French have not been supportive, for the simple reason that they have an entirely different concept of the state. And the moment people began to operate with the concept of a constitution, things became dangerous. The basic idea, is to entirely dissolve the old national boundaries.

The senseless thing about it, though, is: "Who in Europe today is actually considering dissolving the old national boundaries in this way?" The smaller European countries have either expressed fear, or else haven't participated in the discussion at all: "The eastern European countries don't take it at all seriously. And—pardon me—even Turkey doesn't, either; they simply can't take it seriously. Because accepting this constitution would mean their country's dissolution. That's apparently just from a juridical standpoint, but after all, a constitution does have real political consequences."

Moreover, we might add, even the German Federal government doesn't take it seriously, because otherwise, why would they be vying right now for a seat on the UN Security Council? Klecatsky thinks that Germany's ambition in this regard is justified: "I support it, of course. That's politics!" It is his view, that one should use the available tools of international law, in order to further develop mutual relations among sovereign states.

Europe's nations must, of course, cooperate more closely and efficiently—and here the professor entirely shares our own view—but doing that requires neither an EU Commission, nor a constitution, because we can manage quite well "within the framework of the instruments of international law which are currently available to us."

He asks Germans especially to forgive him for his reproaches: "My mother tongue is German, and for many years I was a member of the Association of German Teachers of Constitutional Law. But you must consider the political chaos that has been unleashed by this dangerous constitution discussion."

It all began with the Basic Law Charter—i.e., Part 2, a component of the European Union Constitution—"which is worthless, because the European Court is in no position to be able to follow up its work in the interest of those who bear chief responsibility for the content of the Basic Law. It's all so theoretical, because the Germans have always been big on this. I'm a good acquaintance of their former Federal President Roman Herzog, and I value him highly, but this entire Basic Law Charter was simply a flop, which was intended to divert attention away from the fact that the EU, with its Court, did not want to join the European Convention on Human Rights. With their theories, the Germans are creating much confusion in politics in practice. And up to the present day, this Basic Law Charter is not something real. And I ask myself: 'What do the Germans want with an EU Constitution, anyway?'"

What Will Happen to National Constitutions?

Klecatsky proceeds to address a key question: "Up to now, nowhere has the relationship been specified between the EU Constitution and the constitutions of the constituent states." Years ago, when he first pondered over little Austria's relationship to the EU, he looked for historical parallels, and found one in the standard work by the famous 19th-Century constitutional law theorist Jellinek, who described relations among diverse states, and the forms in which they manifested themselves. "The best example, which most aptly corresponded to the relationship of a small state such as Austria to the EU, was the relationship of the Greater Ottoman Empire to Siebenburgen or some other small country. There, one could find super-authorities and sub-authorities, just as today."

Austria itself, in the meantime, has been able to benefit from its own long experience: "As is well known, over a span of centuries, Austria has not only waged war against, but has also had peaceful relations with, the Ottoman Empire. Austrian diplomats had to learn the Turkish language, and enjoyed hundreds of years of experience with sub- and super-authorities. And now, let's come back to thinking about everyday politics today, in parliaments. There, we are ever and again confronted with the question: What is the relationship of my country, to the super-country?"

In Klecatsky's view, it is an illusion, if not a wilful delusion, to act as if such a European federal state—which is what is suggested by the notion of a "constitution"—could come about by its members joining together voluntarily. "How did the United States come about? First, Lincoln's victory in the Civil War led to stable Union. And how did the German Empire come into existence in 1871? Think back to the 1866 war against Austria—a country which, up to then, had been a member of the German Alliance—and to the war against France. Another example is Yugoslavia, which in the meantime has fallen apart, but which was a product of World War I and the demise of Austria-Hungary." In every single case, military or economic violence was involved.

Moreover, a peaceful coalescence would have been much easier back then, than it is today. "In former times, absolute monarchs were able to determine the future of their countries, but today we live in democracies, and we no longer have absolute monarchs who can divide up and reassemble their countries as they please. But why, then, are people today so unconcerned, for example, about the elections to the European Parliament?" He simply cannot imagine that a European populace would rise up one day, and say with one voice: "Yes, now we shall dissolve ourselves into a single supranational state!"

A large part of the problem lies in divergent ideas about national sovereignty. "The Americans have an entirely different concept of the constitution, from the Germans; and the Germans' concept is different from that of the French. But if referendums were to be held, everything would go to pieces.

And that is dangerous. The constitution question is one big time-bomb."

It is also a completely open question, which countries will hold a referendum, and precisely what the referendum is to decide. Is the decision to be only over the first 45 pages of this draft constitution, or, is it to be on the entire text of the EU Constitution, which is big enough to fill an entire filing-cabinet drawer? Or, is some underlying substrate to be decided upon, and, if so, precisely what would that be?

Meanwhile, a public debate has broken out in France over the EU Constitution, and in November the Socialist Party is to hold an internal vote over whether or not to oppose it. That could already mean the end of it. According to Klecatsky, "The French aren't going to just give themselves up! The Germans are standing there all alone with their constitution."

And now, we come to the crucial question: How do we get out of this dilemma? Must we, as Helga Zepp-LaRouche proposes, return to the European plans as envisioned by de Gaulle? Professor Klecatsky well remembers the Fouchet Plan, which foresaw European-wide institutions with coordinating functions, but which—contrary to Jean Monnet's ideas—were not to be supranational, but were to work under their respective national governments. And so, under Europe's present circumstances, could the Fouchet Plan possibly serve as an emergency safety-net, as it were? Klecatsky: "I think so. In Europe, there have been some good initiatives, such as our experience with the European Council and the European communities. That should be pursued—after all, Europe also needs a stronger hand in foreign policy and military affairs—but not with this pompous declaration that henceforth, our goal shall be to form a single European state! People in the smaller countries simply do not want this new constitution."

Austria, too, in his view, would be better off "doing as the Swiss do," i.e., proceeding slowly and carefully, step by step, on the basis of diplomacy grounded in international law, instead of plunging headlong into the EU. Many advocates of EU membership are impugning their own arguments, when they claim that, "Well, in the worst case, we'll just opt out again!" But, Klecatsky warns, "precisely where, as a small country, are we to opt out to?"

Back when the continent was still divided into two political blocs, neutral Austria occupied a position of some comfort, similar to that of Switzerland. "Things were good for us back then; but now we're having a hard time of it," the professor says. "And now come the referendums, and that makes me anxious. I simply cannot imagine that an entire people is going to say, 'Yes, now we're going to merge ourselves into such a state,' after all the experience we've had with European-wide elections. And a negative outcome would be devastating, resulting in widespread political apathy. It would mean the end of a historic opportunity toward which we have been working for the past 60 to 100 years. That we cannot afford to do."