

What happens if Britain votes no?

By Richard Laming

Article Number 28

During the debate about whether there should be a referendum on the European constitution in Britain, it was not possible to be sure what the British constitutional position really was. In the absence of a written constitution, we were dependent upon different competing interpretations what the constitutional position might be. Something similar applies in the case of the result of that referendum.

Without a European constitution, it is not possible to make a definitive statement about what happens if an individual member state fails to ratify the proposal. There is a formal legal position, which is quite clear, but the debate that the constitution also has political ramifications. These cannot be ignored. The formal legal position if the constitution is not ratified by all 25 member states is that it does not come into force. The British Government's White Paper, published in advance of the IGC, states "If a new Treaty cannot be agreed, or ratified, then the EU would still carry on under its current arrangements; and it would have the same functions as it has today. It would not collapse."

This implies that the current set of institutions of the European Union, as defined by the treaties leading up to and including the Nice treaty, remain as they are at present. The improvements in those institutions contained in the European constitution would not come into force.

These changes include such things as the introduction of open meetings in the Council for legislative matters, the extension of co-decision for the European Parliament to almost all legislative and budgetary questions, and the introduction of double majority voting in the Council. All of these represent improvements in the way the European Union functions: without the constitution, they will not come into force.

Such is the formal legal position. But the political position is different. I think that the consequence of Britain voting no in a referendum and thereby failing to ratify the European constitution would not necessarily lead to the simple continuation in force of the Nice treaty. There are two reasons for taking this view.

What will the rest of Europe think?

First, one has to consider the circumstances in the rest of Europe. The other member states, in ratifying the European constitution, will have rejected the European Union of the Nice treaty in favour of the European Union of the constitution. One member state, Britain, will have rejected the European Union of the constitution in favour of the European Union of the Nice treaty. (Britain being joined by one or two other member states does not undermine the analysis that follows.) Is it realistic to suppose that the other 24 member states will be content simply

to accept that the British vote trumps all their own? I don't think it is.

The improvements in the European constitution are ones that the other member state are committed to: think back to the arguments over the introduction of double majority voting, for example. Was all that for nothing? The other member states will be determined to see that at least some of the proposals contained in the European constitution come into force somehow. The status quo as represented by the Nice treaty will surely not survive.

What does the No campaign want?

The second reason lies in the arguments that will be put forward by the No campaign in Britain itself. What is it campaigning for? Is it content to see the Nice treaty remaining in force in the European Union? I don't think so.

In the summer of 2001, when the Nice treaty was being ratified in parliament, it was fiercely opposed to by the same people who are now opposing the European constitution. For example, Michael Howard said of it: "it purports to lay the ground for enlargement but fails to do so".

Having dismissed the Nice treaty as unacceptable three years ago, he is hardly now going to be able to say that it is his ideal model for future of Europe.



Furthermore, it is worth noting that they treat as a reason for rejecting the constitution the claim made by the Belgian prime minister that it represents the "capstone of a federal state". (Not every federalist rates the constitution quite so highly.) If this really is the case, then they must consider that the European Union of the Nice treaty represents a federal state in every respect bar the capstone. Are the British Conservatives content with this?

Far from being a stable option, it turns out that nobody really wants to see the continuation of the Nice treaty, despite what the Foreign Office document says. A change of some sort is inevitable.

Is renegotiation possible?

But what kind of changes might be negotiated? The Conservatives called for renegotiation of the Nice treaty while it was being debated in parliament. However, not that such a renegotiation has actually taken place – what else was the European Convention launched by the Laeken summit but a renegotiation of the Nice treaty – they have rejected its outcome. They are out of step with opinion in the rest of Europe.

This casts a shadow over the Conservative assumption that result of a British rejection of the constitution would be that "Europe would be forced to confront its failings". Is that really what would happen?

Rather than a British no vote being a catalyst for a wholesale restructuring of the European Union, it is much more likely that it would be a catalyst

only for weakening Britain's position within it. And, looking closely at some of the arguments being put forward by the opponents of the European constitution, this may be what they really want.

Let me sketch out some of the options for Britain if it is not to be a full member of the European Union. These options would be the consequence of the demands of some of the leading opponents of the EU at present. Each option is explained by using an existing country as an example. (This should not be taken to mean that all the details of any one country would apply in the case of the United Kingdom.)

Norway

If Britain were not to be a full member of the EU but wanted to remain in the single market, it could follow the example of Norway and join the European Economic Area. While giving membership of the single market, this allows opting out of other policy areas where desired. Norway is not part of the agriculture and fishing policies, for example. The price of this for Norway is that it has no representation in the EU institutions. There are no Norwegian MEPs; the Norwegian government does not participate in meetings of the Council of Ministers; Norway does not nominate a Commissioner or a judge in the ECJ.

Norway is subject to the decisions taken by the EU institutions even though it is not represented in them. It is obliged to transpose into Norwegian domestic law decisions of the EU over which it has had no influence. Norwegians sometimes

described this as their "fax democracy". While a country of only 4 million people might think that the influence it would get as result of full membership would not actually make much difference to the outcome of EU decisions, the same would not be true of a country with a population of 60 million.

Switzerland

If being subject to decisions of the EU institutions which it opposed was not acceptable, Britain would have to leave the single market altogether. This need not mean ending its economic relationship with the EU completely: it could copy the model of Switzerland and negotiate a series of bilateral agreements instead. Its influence over these agreements would be much reduced; the relationship between the two would be much more important to the UK than it would be to the EU and so the UK's negotiating position would be correspondingly weakened. This would be a very uncomfortable position. In fact, the Swiss president, Joseph Deiss, suggested earlier this year that there is no long-term alternative for Switzerland than to join the EU itself.

Puerto Rico

The Swiss option would see Britain remained broadly speaking engaged with the European Union but with very little influence. The EU would remain its major trading partner and so would affect much of its economic life. Another option that has been floated by some Eurosceptics is that Britain should actually seek to become more distant from Europe and much closer to America. That might give it a status comparable to





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that of Puerto Rico. It would be dependent upon the American economy rather than the European economy but would have no influence over the economic and foreign policies to which it would be tied. Membership of NAFTA perhaps would be beneficial in this position.

This portrayal of the options open to Britain might be criticised for being too extreme. The idea that Britain might leave the European Union seems rather dramatic, still more the idea that Britain might join NAFTA. But prominent British opponents of the European Union are floating exactly these ideas.

For example, when Iain Duncan Smith was leader of the Conservative Party, he said that one of his demands for the renegotiation of Britain's role in Europe would be to end the primacy of European law over British law. That might seem like quite a simple demand, but it is actually very far-reaching. Even in Norway, European law has primacy over domestic law. Iain Duncan-Smith was in effect arguing for Britain to follow – at best – the Swiss model and leave the EU altogether.

Since Michael Howard became leader of the Conservative Party, his support for a renegotiation of the terms of Britain's membership of the EU has been coupled with an explicit rejection of the idea that Britain should leave it. This puzzles me. Given the kind of criticism that he makes of the European Union, I do not understand why Michael Howard should adopt this position. What is it about EU membership that is so important to Michael Howard that he insists that Britain should remain a member?

I warned at the outset that it is not possible to give a definitive answer to the question of what happens if Britain votes no. While the result of a yes vote is clear – Britain would remain a full member of a more democratic and stronger EU – the result of a no vote is more uncertain. There are several different ways in which a more detached relationship might be developed, and some apparently innocuous proposals in fact have some very profound consequences. Which of them might actually flow from a no vote depends on the no campaigners themselves

and what they are forced to reveal during the course of the referendum campaign itself.

When that point comes, I am confident that the British people will not like what the Eurosceptics are proposing and they will see, by contrast, the advantages of continuing to contribute to the development of a democratic and united Europe. When asked, I think the British will reject some kind of mid-Atlantic future for a fully European one.

Richard Laming is a member of the committee of Federal Union, and may be contacted at richard@richardlaming.com. This article is based on a speech given at the conference "A Europe for citizens" on 8 May 2004, organised by Citizens For Europe. The opinions expressed are those of the author and not necessarily those of Federal Union or Citizens for Europe.

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