

Romanian Economic and Business Review – Vol. 2, No. 3**IDEOLOGY, CONSTITUTIONAL CULTURE AND
INSTITUTIONAL CHANGE: THE EU CONSTITUTION AS
REFLECTION OF EUROPE'S EMERGENT
POSTMODERNISM***Nikolay Wenzel****Abstract**

Using the example of the European Constitution, this paper argues that ideology plays a much more important role in institutional change than has been indicated hitherto in the literature. Rather than being an intellectual parlor-game, Postmodernism has emerged through European high culture to find its voice in the new Constitution. Although it was rejected by a critical mass of voters, the proposed Constitution offers a telling glimpse into the European intellectual mindset – especially since politicians are now bruiting the possibility of ratifying the constitution via compliant legislatures rather than fickle referenda. Anomalies in the document are better explained by the post-World War Two emergence of postmodern philosophy in Europe than by more traditional explanations from political economy.

Introduction

Theories of institutional change typically view the transformation of institutions as the result of interactions among different interests – whether imposed or emergent, intended or unintended. While such approaches shed light on institutional change, something seems to be missing. Do interest and competition really provide sufficient explanation, especially once we move

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beyond the neoclassical assumption of perfect rationality? The literature on sociotropic voting (Caplan 2002) and expressive voting (Brennan and Lomasky 1993) along with some voices in New Institutional Economics (*e.g.*, North 1990, North 1994, Pejovich 2003) indicates that institutional change does not emerge exclusively from power struggles or a cooperation game.

Using the example of the proposed European Constitution as a reflection of Europe's emergent postmodern philosophy, this paper argues that ideology plays a much more important role than has been indicated hitherto in the literature. Rather than being an odd fancy relegated to the *salons* of Europe and isolated faculties of Philosophy, English, and Cultural Studies at American universities, Postmodernism has emerged through European high culture to find its voice in the European Constitution. Although it was recently rejected by a critical mass of European voters, the proposed constitution offers a telling glimpse into the European intellectual mindset. While the constitution may have been rejected by French and Dutch voters in national referenda, we have not heard the last of it; in the wake of the European Union's 50th anniversary celebrations, the draft constitution is certain to resurface, if in modified form, most likely for ratification by national legislatures. Anomalies in the document are better explained by the post-World War Two emergence of postmodern ideology in Europe than by more traditional political economy explanations.

This paper examines some constitutional anomalies, including the peculiar origin of European citizenship and identity, the emphasis on positive over negative rights, the predilection for process over result, and the rejection of the American Hobbesian world in favor of a European postmodern paradise of perpetual peace through diplomacy. Section I offers background comments on institutions and institutional change. Section II examines the EU constitution, its background and constitutional anomalies. Section III presents a primer on the philosophy of Postmodernism. Section IV ties in the previous two sections, explaining the EU constitution from a postmodern perspective. The final section concludes.

I. Institutions and Institutional Change

The role of institutions in mitigating transaction costs, facilitating the transfer of knowledge, and offering sound incentives has already been thoroughly described in the literature (see, *e.g.* Furubotn and Richter 2000, Langlois 1994 and North 1994).

1. Institutional Evolution

But where do institutions come from, and how do they evolve? Institutions are inherently dynamic, as they reflect the mechanisms of a multitude of simultaneous interactions (see, *e.g.* North 1994 on institutional change and the role of learning in institutional evolution). Different intellectual traditions see different sources and forms of institutional change, whether from a contractual renegotiation (Buchanan 1975 or Brennan and Buchanan 1985; generally, see Hardin 1988, Gordon 1976 and Voigt 1997) or from a more gradual emergence or coordination (Hayek 1967a, 1967b, 1979a [1973, 1976, 1979] and 1979b 1988, Hardin 1988 and 1999 or Gordon 1976)

Something seems to be missing in all of these stories (although the emergent perspectives come closest). Are interest and competition really sufficient to explain institutional change? The literature on sociotropic voting (Caplan 2002) and expressive voting (Brennan and Lomasky 1993) indicates that the institutional story does not end with selfish actors interacting in the institutional arena, with institutional change emerging as a consequence of power struggles, conflicts of interest, or a cooperation game.

Let us, then, digress for a moment and talk of ideology. Hirshleifer (in North 1978) reminds us that there is more to social change than just political or economic competition, or a shift in relative prices: "many of the really great social changes in human history have clearly stemmed from shifts in people's goals for living. Indeed, the economist is in danger of trivializing these fundamental values and goals by suggesting that they are merely arbitrary 'tastes'." North (1994) further explains that

[it] is necessary to dismantle the rationality assumption underlying economic theory in order to approach constructively the nature of human learning [and its influence on institutional change]. History demonstrates that ideas, ideologies, myths, dogmas, and prejudices matter; and an understanding of the way they evolve is necessary for further progress in developing a framework to understand societal change.

He then defines ideology as "shared frameworks of mental models that groups of individuals possess that provide both an interpretation of the environment and a prescription as to how that environment should be ordered." This concept is clarified by Pejovich (2003) with the notion of *prevailing* culture, a community's "mainstream" rules of the game.

Once we have added ideology to the mix, a different picture emerges. To be sure, ideology does not explain away the importance of interest or competition in determining institutional choice and evolution – but it does alter and complete the analysis. Borrowing for a moment from microeconomics, we might think of the interplay between interest and ideology as that between a budget constraint

and a utility function, where both are determinants of optimal quantity consumed. North (1994) explains how "it is more than just constitutional rules – it is also the ideological context that determines the acceptable range of choices."

Drawing from a different tradition – philosophy – Pippin (1999, xvii) argues that "Modern institutions...presume a distinct sort of authority, a claim to allegiance based on distinct premises that are essentially philosophical claims."

In recognizing the role of ideology in institutional change, this paper does not abandon the more traditional stories completely, but instead builds on them. To illustrate, it examines a particular case study – the proposed Constitution of the European Union. The document shows the marks of competition among political and economic agents and a consensus among the European powers. But as we will also see, these two stories are not sufficient, and the injection of ideological analysis explains much that the traditional approaches cannot. The European Constitution is a manifestation of a distinctly European ideology: the philosophy of Postmodernism.

2. Constitutional Culture

As a particularly relevant type of ideology, constitutional culture can be defined as an attitude about constitutional constraints and constitutionalism. Constitutional culture includes the implicit and explicit, stated and unstated, conscious and subconscious, thoughts, feelings, beliefs, impressions and norms a group holds about the nature, scope and function of constitutional constraints. Different groups in society (*e.g.* educated versus uneducated, élites versus masses, legal practitioners versus politicians, politicians versus the street, dirigiste versus *laissez-faire*, etc.) can have different constitutional cultures. In a linguistic simplification, I will refer to the predominant constitutional culture – the constitutional culture of the most powerful meso-group or the constitutional culture most widely shared – as the national constitutional culture, where appropriate.

Constitutional culture is an element of political and civic culture (see Almond and Verba 1965; Putnam 1978 and 1993, Sartori 1965, or Franklin and Baum 1995) dealing specifically with constitutional attitudes; it is thus narrower, and does not include related parameters such as civic participation, political cognition, partisanship, pride in institutions, time-preference, tolerance, electoral participation, etc. Constitutional culture contains only the elements pertaining to meta-rules, the general organization of law and society, and willingness to be constrained. To be sure, the two (civic/political culture and constitutional culture) are related and intertwined. But I focus here exclusively on constitutional culture, leaving the details of democracy and civic involvement to an already rich literature.

Thus, constitutional culture reflects the most basic beliefs and attitudes about general organization, that is, not just the constitutional text itself, "but the entire network of attitudes, norms, behaviors and expectations among elites and publics that surround and support the written instrument" (Burnham 1982, 78, paraphrasing Aristotle). As such, constitutional culture varies along a number of themes and questions beyond the actual constitutional text.

- Is a constitution a permanent document, representing eternal truths or natural laws about human nature? Or is it merely a set of organizational by-laws, to be amended as a reflection of the *Zeitgeist*?

- Is the constitution a source of legal protection of rights, as enshrined perhaps in a bill of rights? Or does the constitution merely establish the governance structures, legislatures, etc. that will protect those rights, themselves defined by the legislature, as reflection of the popular will?

- If there is a conflict between the constitution and the popular will, as expressed by an electoral majority, which should prevail? Should the constitution, as an expression of fundamentals, carry and act as a buffer against tyranny of the majority? Or should the majority prevail, as the constitution is seen as a holdover from the past, giving undue influence to past power holders? In more concrete day-to-day terms, what if there is a conflict between the government and the constitution? Should the legislature, as representative of the popular will, prevail? Or should a body of constitutional review – almost certainly not democratically chosen – dictate proper constitutional conduct and have the power to nullify acts of parliament or the executive? To what extent, and under what circumstances? Who is to interpret the constitution? Should details be left to the text, to the executive, to the judiciary to popular referendum, or to the legislative majority? Or to the military?

- What if there is a conflict between the constitution and political expediency? Which should carry? The constitution, as long-term arrangement and compromise? Or should the constitution be bypassed, as a thwart to efficiency, expediency or "progress." And, in dire circumstances, when should the constitution (or elements thereof) be suspended, say by a military coup?

- How is the constitution to be amended? Should it be amended by simple majority, just like any other act of legislature? Or is it important enough that a super-majority, or even a special constitutional convention, ought to be required?

- Is the constitution widely accepted as a coordinating mechanism? Or is it merely seen as an unfair increase of transaction costs, to benefit those who established it? Should we accept constitutional constraints, while remaining free to complain about them? Or should we (or do we) ignore or rebel against those

we do not like, or with whom we disagree? Do we bow to those who hold power constitutionally? Or do we merely acquiesce and do our best to undermine them?

Contrary to existing definitions, I adopt a broader definition of constitutional culture, to incorporate all feelings and attitudes about constitutionalism, and not just a constitutional culture that accepts constitutional constraints. Thus, a given constitutional culture can reject constitutionalism outright, if expediency is valued more than principle. In fact, such cases of rejection (constitutional failure) and the shifting subtleties of constitutional culture within general acceptance (constitutional maintenance) are indeed more instructive than the narrower definitions presented above from the literature. For details on the definition of constitutional culture, see Wenzel 2007a; for methodological considerations, see Wenzel 2007c and 2007h; for general applications, see Wenzel 2006 and 2007b; for questions of matching constitutional culture with parchment see 2007d and 2007e, as well as 2007f and 2007g for case studies. For now, suffice it to say that constitutional culture affects the choice of parchment (in addition to the likelihood of success of any given constitutional system).

II. From Interest To Ideology: The EU Constitution

The European Union rose sphinx-like from the ashes of a traumatized post-World War Two Europe. Although the vision of a "United States of Europe" was present at the creation, the transformation from warring European states to the present European Union was gradual – and took more than half a century to accomplish. The European Constitution does, to an extent, represent the traditional story about unintended consequences from competition and the intended consequences of coordination.

1. The Road from Rome to Brussels

From a loose commercial coalition started in the rubble of post-war Europe, to a more formal European Community started in 1957 with the Treaty of Rome, the European project has evolved into a European Union of 27 members, complete with its own institutions, a common currency¹, a unified central bank, a common market, and limited restrictions on internal immigration.

How did the EU evolve from a collection of disparate countries (that had been fighting for the better part of the last millennium) into an increasingly unified entity? Two stories can be told from the traditional perspectives of

¹ If only 13 of the 27 member states of the European Union.

institutional change, *i.e.* an economic analysis starting from incentives, competition and unintended consequences.

a. The EU as Coordination Game

The first and simplest story comes from analysis of the EU as a coordination game. The emergence of the European Union can be seen simply as a coordination game among the European states (what Hardin (1999) calls "politically significant" forces or "interests that matter"). After centuries of warfare, culminating in the carnage of World War Two, Europe was exhausted and broken. The original purpose of the European Community (through the European Coal and Steel agreements in 1951) was to intertwine the economies of France and Germany so tightly that it would be impossible for them to engage in another war. The European Union, on a very basic level, can be seen simply as a coordinating device for all the players in the European football game to play fair with each other – and gain strength through cooperation.

b. The Lobbyists and the Lobbied: the EU as Unintended Consequence

Instead of viewing institutional change as an intentional result of coordination efforts, we can view it as the "unintended result of market interactions" (see, *e.g.* Langlois 1992) – in this case, the competition among lobbyists seeking rents from the growing European Union.

An alternative to the coordination game explanation is that the European Union – rather than being the intended result of negotiation among the politically significant actors in Europe – is the unintended consequence of rent-seeking activity. We can thus see the European Union's penchant for regulation as an extension of the Franco-German welfare state, slowly harmonizing (always up, rather than down) the regulatory and tax regimes of the different European countries to reduce internal competition (de Jasay 2003a and 2003b). States, however, are not the only lobbyists in Europe: the lobbyists themselves also have an interest in the story. Thus, Petroni (2003) argues that, although the EU was originally established to avoid war through trade and industrial intertwining, the lawyers and judges quickly took over the politicians' project. Their principal tools were strategic legal obfuscation (see Howe 2004) and the doctrine of *acquis communautaire*. According to this principle – which was established by the European Court of Justice's judicial fiat rather than by treaty or legislation – any power or jurisdiction relinquished by the member states to the EU (whether by treaty or by the Court) remains an undisputed EU power or jurisdiction in so-called "similar" cases, as determined by the Court – rather than according to the letter or particulars of future treaties and cases.

Anderson (1994) offers a theoretical addition to this story. Instead of the State as merely a regulation- and rent-producing black box lobbied by different

rent-seekers, we now have the addition of government as another element in the lobbying equation. After all, the State and its bureaucrats also have an interest in institutional change. Just as the European Court has increased its own power by judicial fiat, the EU institutions themselves have lobbied for greater growth. Thus, 18 of 66 delegates to the European Constitutional Convention (and four of 12 of the Convention's Presidium) represented European Union institutions, rather than member states or the people thereof. More importantly, with the addition of a Convention president and two vice presidents, the "recent European Convention was constructed so that the median voter of the convention had a bias in favor of centralization" (European Constitutional Group 2004). Not surprisingly, more centralization is exactly what the Convention produced – to the greater glory of existing EU institutions (see also de Jasay 2003a and 2003b).

2. The Constitutional Document: Beyond Mere Interest?

For all their descriptive powers, these two traditional stories of institutional change do not sufficiently explain the overall thrust of the European Constitution. Beyond length and lack of clarity, the document is bizarre at best; in fact, Pini (2003) has gone so far as to describe it as "a constitutionalist's delusion," "a political aberration," and "not a constitution – not theoretically, not practically." As the 126-page behemoth reads more like a spending bill than a constitution, I simplify the analysis into three salient representative themes: citizenship, rights, and strategic obfuscation.

a. Citizenship and Identity

In the American model, government derives its legitimacy up from the people. There is no such sense in the European case, where the constitution comes first, then citizenship derives from the document (similar to a condominium association in the US). The oddity continues with a tautological top-down, super-national identity: in a circular argument, the constitution is based on a sense of "Europeanness" that is itself derived from the constitution. European identity – rather than natural law in the American tradition, or the popular will in the continental Rousseau-Hegelian tradition – has become the philosophical foundation (see, generally, Petroni 2004).

Similarly, delegates to the Constitutional Convention agonized over the proper wording and substance for the philosophical foundations of Europe. Although some delegates pushed for inclusion of a reference to Europe's Christian heritage, that wording was deemed too controversial, and was replaced by a milder acknowledgement of Europe's "Graeco-Roman and Enlightenment tradition" (de Jasay 2003a and 2003b).

b. *Rights*

The fundamental purpose of a constitution is to establish the basic parameters of sound government and protect rights – to "impose significant constraints on government, whatever form it takes (majority rule or otherwise)" (Barry 1990; see also Hayek 1960, European Constitutional Group 2004 and Pini 2003). The European constitution does neither. By its sheer size (126 pages in the French original), it cannot be said to set up basic parameters. Instead, it attempts to set up the detailed mechanics of European federalism. Furthermore, Pini (2003) worries that the constitution, instead of limiting state power and protecting rights, is not sufficiently abstract and removed from the foibles of in-period politics (as a good constitution should be), and that it "adds rules, as always" (see also European Constitutional Group 2004).

The length and detail of the document underscore the radically different philosophies of the American and European documents. Madison's constitution set forth the limits of state action, establishing "islands of regulation in a sea of liberty." Giscard d'Estaing's constitution, conversely, establishes "islands of liberty in a sea of regulation" (see Barnett 1991 and 2004.) Just as citizenship is granted from the top down, so are rights. Petroni (2003) explains that there are no individual rights under the EU constitution: rights are those given by the constitution to the people. In this top-down spirit, the EU constitution places greater emphasis on (so-called) positive than negative rights – along with the member- and super-state's responsibilities in "guaranteeing" them.¹

¹ The inclusion of positive "rights" is a contradictory jinx for a constitution. As I return to this point throughout, I should make a note here on the distinction between negative rights (life, liberty, the pursuit of happiness) and the fiction of "positive rights" ("right" to a job, to housing, to happiness, to education, etc.). Rand (1966, 322-325) explains it best:

The concept of a "right" pertains only to action – specifically, to freedom of action. It means freedom from physical compulsion, coercion or interference by other men.

Thus, for every individual, a right is the moral sanction of ...his freedom to act on his own judgment, for his own goals, by his own *voluntary, uncoerced* choice. As to his neighbors, his rights impose no obligations on them except of a *negative* kind: to abstain from violating his rights....

[As for so-called "positive rights,"], jobs, food, clothing, recreation (!), homes, medical care, education, etc. do not grow in nature. These are man-made values – goods and services produced by men. *Who* is to provide them?

If some men are entitled *by right* to the products of the work of others, it means that those others are deprived of rights and condemned to slave labor.

Any alleged "right" of one man, which necessitates the violation of the rights of another, is not and cannot be a right.

No man can have a right to impose an unchosen obligation, an unrewarded duty or an involuntary servitude on another man. There can be no such thing as "*the right to enslave.*"

A right does not include the material implementation of that right by other men; it includes only the freedom to earn that implementation by one's own effort....

c. *Muddle, obscurity and subterfuge*

The mere length of the EU Constitution makes it a delight for sadistic law professors. The text of the US Constitution is comparatively simple and straightforward, yet has generated volumes of controversy and interpretation. One can only imagine the seeds of confusion, conflict and interpretation strewn in the long and complex European text. As described above, a plausible story has been told that the lawyers and judges co-opted the original European project. By making things more legalistically complicated, these high priests of constitutional interpretation stand to gain.

But the story does not end there. Howe (2004) explains the institutional mission creep and jurisprudence of European legal interpretation. The European Commission (the EU's executive arm) has been "using powers for one purpose to serve a quite different...purpose." The EU Constitution's "general provisions...will encourage the Commission and the ECJ [European Court of Justice] to interpret EU powers even more broadly than they do at present." Furthermore, the Court has not been an innocent bystander in this process. In addition to expanding its own powers and Union powers through creative interpretations and through the principle of *acquis communautaire* defined above, the Court has been manipulating jurisdiction. Howe (2004) explains how the Court "interprets the legal texts which it enforces largely by reference to their 'objects and purposes.' This means...that identically worded provisions in two different treaties can be interpreted to have very different effects." Things will only get worse with the new constitution, as "changing the legal basis of the EU from a series of treaties to a self-contained Constitution would fundamentally alter the Court's view of the 'objects and purposes' of the legal texts which it is applying."

Any undertaking that involves more than one man, requires the *voluntary* consent of every participant. Every one of them has the *right* to make his own decision, but none has the right to force his decision on others.

There is no such thing as "a right to a job" – there is only the right of free trade, that is: a man's right to take a job if another man chooses to hire him. There is no "right to a home," on the right of free trade: the right to build a home or to buy it. There are not "rights to a 'fair' wage or a 'fair' price" if no one chooses to pay it, to hire a man or to buy his product. There are no "rights of consumers" to milk, shoes, movies or champagne (there is only the right to manufacture them oneself)...

The presence of positive "rights" in a constitution is problematic (beyond the patent philosophical absurdity). Indeed, it is contradictory at best, and schizophrenic at worst, to commingle the protection of negative rights with positive "rights" (which imply, *ipso facto*, a violation of the negative rights of those forced to provide the goods or services to which an alleged positive "right" is created). Feeding the hungry is surely a noble goal, and worthy of a societal (and thus perhaps constitutional) aspiration – but to invent a "right to eat" and thus violate property rights is an ill-omened start for constitutional restraints on government.

Robinson (2004) explains that such "constitutional muddle" is intentional, and has served the purposes of European centralizers. Unable to obtain their political goals immediately, they have resorted to legalistic obfuscation and unclear constitutional verbiage to achieve their aims through "subterfuge," "confus[ing] the citizens of various member states [in Europe's] 'Journey to an Unknown Destination'." Again, the lawyers, judges and Convention delegates remain the high priests in the interpretation of an intentionally confusing document; the incentives are clear.¹

In a telling example, Petroni (2004) describes how the Constitution clearly defines "human health" as a function specifically reserved for the member-states and shielded from EU jurisdiction. Simultaneously, the Constitution enumerates "public health" as a European Union function – but does not define a distinction between "human health" and "public health"!

III. A Philosophical Parenthesis (... or "Postmodernism: A Primer")

At this point, a philosophical parenthesis becomes necessary. Indeed, although much of the European project makes sense as a simple coordination game or from a rent-seeking perspective, the constitutional anomalies described in the previous section (and the EU as a whole) cannot be explained by traditional economic theories of politics alone. These constitutional themes, along with a number of demonstrated preferences from the EU, represent a pattern of behavior and attitude. The pattern is, in fact, so striking, that one can speak of a European *Weltanschauung* – a way of looking at the world, a way of engaging it, a way of acting – that is, influencing the prevalent constitutional culture of the European Union. That *Weltanschauung* is Postmodernism, hence the need for a brief philosophical primer.

Like the European project, Postmodernism sprang forth from the horror and destruction of World War Two in Europe. But its roots run deeper, to the 19th century. The philosophy stands in contrast, first and foremost, to Modernism (also known as the Enlightenment project).²

¹ Such self-serving interpretation would seem to parallel the political sleight of hand that is likely in the constitution's imminent ratification. Having failed to convince the people, and having failed by referendum, politicians of EU member countries are now bruited the possibility of adopting the constitution via the back door of parliamentary majority.

² N.B. Out of simplicity, I am conflating two very different (and often contradictory) strands of Enlightenment thought, viz. the Scottish and Continental Enlightenments. This is a dangerous – if far too common – conflation, as the Scots emphasized humility, reason grounded in faith, and a healthy acceptance of human nature, whereas the Continentals lapsed into a hubristic cult of reason, leading to social engineering, a complete negation of the individual in favor of some putative "greater" or "common" good – and, bluntly, Auschwitz and the Gulag. As much as I

Starting roughly in the 17th century, Modernism (the Enlightenment) replaced the pre-modern appeal to faith with an appeal to reason. Without lapsing into the details of philosophical theory (see Yack 1986, Harvey 1989 and Pippin 1999 for such details), the implications of Modernism ring familiar, as they are still with us today: the modern nation-state, with legitimacy derived from the people rather than from the monarch's divine right; the supreme authority of reason (over tradition or faith); human rights; free markets; and the mastery of nature through science and technology (Pippin 1999, 4-5). Harvey (1989, 12) explains how the purpose of the modern project was

to use the accumulation of knowledge generated by many individuals working freely and creatively for the pursuit of human emancipation and the enrichment of daily life. The scientific domination of nature promised freedom from scarcity, want, and the arbitrariness of natural calamity. The development of rational forms of social organization and rational modes of thought promised liberation from the irrationalities of myth, religious superstition, release from the arbitrary use of power as well as from the dark side of our human natures. Only through such a project could the universal, eternal, and the immutable qualities of all humanity be revealed.

Habermas (1983, 9) adds that the early Moderns had "the extravagant expectation that the arts and sciences would promote not only the control of natural forces but also understanding of the world and of the self, moral progress, the justice of institutions and even the happiness of human beings." Modernism was a hopeful, excited project, an optimistic unleashing of the human spirit and previously untapped human creativity, after earlier stifling by the bonds of tradition and faith.

Modernism offered a new epistemological appeal, detached from earlier religious confines. Harvey (1989, 13) explains that Modernity was "a secular movement that sought the demystification and desacralization of knowledge and social organization in order to liberate human beings from their chains." Even as it broke from the earlier religious monopoly, Modernity did not shed transcendent foundations entirely; for example, Kurtz (1986, 12) writes that 'the issue of Modernity was fundamentally a conflict between ecclesiastical authority and the authority of independent scholars,' i.e. a new approach to religion, rather than a

shudder to conflate these two lines of thought, I must resign myself to the fact that they are indeed conflated in the popular – and intellectual – mind; the postmodern reaction – if it is indeed a reaction to Auschwitz, the Gulag, the destruction of the environment through ill-defined property rights and the industrialization of war, all of which are necessary and inevitable consequences of the Continental Enlightenment – makes perfect sense. For details on the two enlightenments, see Hayek 1967, 1978 and 1979, Hampson 1991, Boettke 2000, Porter 2001, Himmelfarb 2004 and Wenzel 2007i.

total jettisoning of faith – what Daly (1985) refers to as 'the Kantian ideal of religion within the limits of reason.'

But the modern project was not without its doubters. As early as the 19th century, the very premises of Modernism began to be called into question. What began as doubts about the limitations of reason (initially brushed aside by Modernism's confident optimism) evolved into a fuller critique. Modernism was seen to be spiritually weakening at best, and downright destructive at worst. Pippin (1999, xii) describes 'the widespread nineteenth century suspicions (at least on the European continent) that ... the two greatest accomplishments of world civilization, modern natural science and technology, and a progressive, liberal democratic culture, were...slowly and inexorably enervating and spiritually destroying that very culture.' In many ways, such early grumblings foreshadowed much of the 20th century's ugliness and many of its problems. The scale and horror of two world wars galvanized the theoretical concerns. Pippin (1999, 7) explains that: the great self-confidence and progressivism characteristic of the modern enterprise and especially what seemed its nineteenth-century fruition, all looked even more difficult to accept after the historical horrors of the twentieth century. The fact that art, intellectual pursuits, the development of the natural sciences, many branches of scholarship flourished in close spatial, temporal proximity to massacre and the death camps has raised for many doubts about not only Modernity's self-assurances, but about all of Western culture, has raised the issue: Why did humanistic traditions and models of conduct prove so fragile a barrier against political bestiality?

Harvey (1989, 13) echoes this thought, explaining that 'whether or not the Enlightenment project was doomed from the start to plunge us into a Kafkaesque world, whether or not it was bound to lead to Auschwitz and Hiroshima, and whether it has any power left to inform and inspire contemporary thought and action, are crucial questions.'

According to the alternative school of *Post*-modernism, the modern project, 'laudable though it may have been at one time, has in its turn come to oppress humankind, and to force it into certain set ways of action' (Sim 2001, vii); Zuckert (1996, 1) traces the concerns back to the 'conviction that modern rationalism ha[d] exhausted its promise and possibilities', starting with Nietzsche. Where some saw aberrations or challenges within the modern project, Postmodernism saw unavoidable and logical consequences: colonialism; fascism/communism and industrially planned genocide; the destruction of the natural environment in the name of unfettered progress and technology; the North's 'exploitation' of the South; the horrors of modern warfare, compounded by methodical application of the very science and technology initially meant to liberate humanity; and the spiritual poverty and alienation of mass consumerism.

Harvey (1989: 13) explains that 'there are those – and this is... the core of post-modernist philosophical thought – who insist that we should, in the name of human emancipation, abandon the Enlightenment project entirely.' The postmodern rejection of the modern project is thus both (a) theoretical and methodological, and (b) applied and political.

On the theoretical and methodological side, we see a 'rejection of many, if not most, of the cultural certainties in which life in the West has been structured over the last couple of centuries' (Sim 2001, vii). Specifically, Postmodernism attacks the very core of the modern project, questioning the existence of any truth and the ability of human reason to find it. As a radical alternative, Postmodernism holds that knowledge and belief are products of environment, and that we should thus speak of contingent 'narratives' rather than absolute truths. Naturally, different people will have different narratives, as they have different cultural, intellectual, economic and sociological backgrounds. Thus, a postmodern comparison of narratives replaces the modern search for truth. On the applied and political side, two principal consequences follow from this radical relativism.

First, Postmodernism rejects any claim of absolute truth as an attempt to impose one worldview over others. No individual narrative has a legitimate right to exclude any other; everything is contingent on context and background, so there is no 'inside track' to truth (see Natoli 1997). In the vocabulary of Postmodernism, claims of superiority or truth are referred to as attempts to impose a 'master voice' or 'meta-narrative' (see Lyotard 1981). 'Postmodern politics then becomes a continuous negotiating of various compromises as to what meanings and values are to be represented in the social order and to what degree. Outcomes here are relative to time and place and the already established dispositions of power' (Natoli 1997, 18). There follows a suspicion of certainty and philosophical foundations, and the replacement of absolute 'meaning' with relative 'interpretation.' Pippin (1999, 41) explains that 'for many so-called postmodernists, modernism represents the last game played by Western bourgeois high culture, an elitist code designed only to preserve and celebrate the... point of view of an exhausted but still immensely powerful middle class.'

Second, Postmodernism challenges the main tenets of modern political economy. Thus, the modern nation-state becomes an instrument of centralized repression of minority voices; the supreme authority of reason ends up being but the 'voice' of those in power attempting to impose their personal views as 'the master voice' over all other narratives; natural rights are not universal values, but a Western concept, imposed on the rest of the world by 'cultural imperialism' or even force; free markets are seen as the freezing of one particular institutional arrangement that benefits those who have the power to expand their wealth

through addictive, exploitative and spiritually hollow mass consumerism; and the mastery of nature through science and technology becomes an excuse for 'ecocide' in the empty name of progress.

Postmodernism is not just a cute way of interpreting literature, to the delight of sadistic faculty and the terror of students; it has slowly crept into the Western worldview. Huysens (1984) asserts that:

What appears on one level as the latest fad, advertising pitch and hollow spectacle is part of a slowly emerging cultural transformation in Western societies, a change in sensibility for which the term "post-modern" is actually, at least for now, wholly adequate. The nature and depth of that transformation are debatable, but transformation it is. I don't want to be misunderstood as claiming that there is a wholesale paradigm shift of the cultural, social and economic orders; any such claim clearly would be overblown. But in an important sector of our culture there is a noticeable shift in sensibility, practices and discourse formations which distinguishes a post-modern set of assumptions, experiences and propositions from that of a preceding period.

This is just a *précis*, intended to provide an overview of the literature on and trends in Postmodernism and religion, rather than a detailed explanation of postmodern theory. Terms such as simulacra, *différance*, the Other and (k)nots are thus eschewed, as are such technical subtleties as described by Connor (2004, 4): 'How one capitalized or hyphenated – "post-modern," "Post-Modern," "postmodern," or "Postmodern" – seemed to many to matter a great deal, along with whether one chose to refer to "Postmodernism," "postmodernity," or simply "the postmodern".' Such details are beyond the present scope, and the interested reader is invited to visit the literature for greater depth that goes beyond the limited scope of this review (see, e.g., Lyotard 1981, Habermas 1983, Huysens 1984, Harvey 1989, Bauman 1992, 1995 and 1997, Bertens 1995, Natoli 1997, Sim 2001 or Connor 2004).

IV. Understanding The European Union As A Postmodern Project

This brief description might lead to the conclusion that Postmodernism is just a trendy philosophy, a parlor-game for European intellectuals and isolated professors at a handful of Northeastern American universities. And with good reason...

However, lest we be tempted to consider Postmodernism as an obscure academic phenomenon, Pippin (1999, xvii) reminds us that "Modern institutions...presume a sort of distinct authority, a claim to allegiance based on distinct premises that are essentially philosophical claims and do not remain affected by skeptical attacks, however complicated and abstract the form of those

attacks can initially be. If the principles supporting such claims to authority begin to look prejudiced or arbitrary, much more comes to be at stake than journal arguments or books reviews."

Indeed, an analysis of the European Constitution as a Postmodern document leads to a different understanding. Traditional explanations from the fields of New Institutional Economics, Public Choice and Constitutional Political Economy shed much light on the European project. But one can fully understand the EU and its new constitutional text only from an ideological standpoint, enriching economic analysis of institutions with an understanding of constitutional culture and postmodern philosophy.

1. Constitutional Themes

The three constitutional anomalies from section III.2 above (identity, rights, and textual obscurity) can best be explained through the lens of Postmodernism.

a. Identity

In a postmodern context, which eschews one "overarching story" in favor of competing narratives, Europe is the new galvanizing factor. Rather than the modern nation-state, postmodern Europe is an umbrella that gives voice to regional and personal interests; "one of the main points of postmodernism...is that 'the most particular is the most universal.' So when it comes to 'identity' the trick for the constitutional experts writing the constitution was to express that by being very much themselves, they would be more European" (Prado 2004). The European umbrella, along with the constitutional refusal to derive legitimacy from the people or nation-states, is a reflection of "[Postmodernism's] 'anything goes' pluralism and its delirious celebration of difference." (Sim 2001, 28)

b. Rights

Likewise, natural rights are considered a suspicious – and culturally contingent – holdover from Modernism. Far better to emphasize positive "rights" (which are much more fluid and subject to interpretation). The same goes for the safe, descriptive allusion to the "Graeco-Roman and Enlightenment heritage" over any appeal to Christianity and its tendency to impose a "meta-narrative." Naturally, a more traditional explanation would point to a pragmatic catering to Europe's large Moslem minorities or Turkey's possible entry into the EU. But, again, the traditional story makes more sense with an added ideological/philosophical explanation.

c. Textual Obscurity

The lack of clarity in the European Constitution goes beyond mere lawyers' games, and is better understood as postmodern interpretation over clear meaning. Prado (2004) explains that

[a] Constitution is, like every text, made out of language. Thus, given the metaphoric nature of language...a Constitution written in the 21st century is very open to a postmodern...analysis... Plus, given the fact that many governments will ask their citizens to approve the Constitution via referendum, the openness to interpretation of every text (a main issue in postmodernism) will play a big role. Every government will have to 'interpret' the Constitution in a certain way to make it palatable to its own citizenry. That's postmodern practice – 'meaning' is never 'closed'."

Postmodernism sheds a whole new light on the EU Constitution's textual obscurity and the European Court's interpretation of a treaty's purpose over its text.

2. Other European Preferences

Space considerations prevent more detail, but other aspects of European policy are also made clear within a postmodern understanding. Europe's quasi-religious preoccupation with environmental protection over economic growth, along with its adoption of the precautionary principle over rational, scientific/mathematical risk assessment, reflects the postmodern concern with scientific apprentices turning against their modern sorcerers. Europe's lack of military power and reluctance to use force can be understood as a (postmodern) state of "perpetual peace" through diplomacy, in contrast to the (very modern) Hobbesian world of military force in which the US continues to live (Kagan 2002). Europe's predilection for diplomatic and bureaucratic process and dialogue – over results – can be understood as a postmodern consideration of competing narratives rather than imposition of one narrative as the "meta-narrative." And the list goes on.

V. Conclusion: From University To Constitution

The subtitle of Pippin's (1999) book on *Modernity as a Philosophical Problem* ("On the dissatisfactions of European high culture") is no coincidence. Postmodernism has emerged from European high culture to find its voice in the new European Constitution. Without consideration of ideology, without an understanding of contemporary Europe's prevailing *Weltanschauung*, it would be impossible fully to understand the European project. We thus see the importance of incorporating ideology as a factor in analyzing institutional change.

This enriched analysis, however, begs a number of central questions. Specifically, where does ideological change come from? Indeed, it is a safe assumption that most Europeans have not read Derrida, Rorty, Habermas, Nietzsche, and the other high priests of Postmodernism in any detail, if at all. It is also safe to assume that most Europeans would fail a test on the basics of

Postmodernism. Yet Europe as a whole (as well as many Europeans, based on my own fledgling and informal economic anthropology) seems to embrace the Postmodern ideology, as reflected in its institutions and general *Weltanschauung*. Where, then, did Postmodernism come from? Is it taught in the schools? Has it made its way somehow into the popular culture, without being identified as such by the very people who embrace it? And if the ideology's main tenets do not explicitly exist in the minds of Europeans, where do they reside, and how are they transmitted? In and through conventions, language, standards, and ever elusive "culture"?

These remain unanswered questions, and the subject of further inquiry.¹ It is tricky enough to study constitutional culture and ideology, then watch them emerge into formal institutional order. But it will be even more intriguing to dig one step further, using the young discipline of economic anthropology, to study the very origins of culture and ideology. I welcome further research.

As for Europe, a critical mass of its voters has rejected the proposed Constitution of 2003. But we have not heard the last from the constitutionalists and the federalists. We can expect another draft Constitution before too long, if in the form of a treaty to be ratified by compliant legislatures rather than fickle voters. In the meantime, the first proposal offers great insight into the *Weltanschauung* in Europe. From the university to the statehouse, ideology has emerged.

References

Almond, G. and S. Verba (1965), *The Civic Culture. Political Attitudes and Democracy in Five Nations and Analytic Survey*. Boston: Little, Brown.

Anderson, G., 1994. The economic theory of regulation, in: Boettke, P. (ed.), 1994, *The Elgar Companion to Austrian Economics*. Cheltenham: Edward Elgar Publishing.

Barnett, R. (2004), *Restoring the Lost Constitution: The Presumption of Liberty*, Princeton: Princeton University Press.

Barnett, R. (1991) *Rights Retained by the People: the History and Meaning of the Ninth Amendment*, Fairfax: George Mason University Press.

Barry, N., 1990. The liberal constitution: rational design or evolution? *Critical Review*, 3, 267-282.

Bauman, Z. (1992). *Intimations of Postmodernity*. London and New York: Routledge.

¹ I wrestle with such issues of ideological and cultural emergence in a separate set of papers (Wenzel 2007a, 2007c, and 2007h, as well as 2007j and 2007k).

Bauman, Z. (1995). *Life in Fragments*. Oxford and New York: Blackwell.

Bauman, Z. (1997). *Postmodernity and its Discontents*. Cambridge: Polity Press.

Bertens, H. (1995). *The Idea of the Postmodern: A History*. London: Routledge.

Boettke, P. (2000). 'Which Enlightenment and Whose Liberalism: Hayek's Research

Program for Understanding the Liberal Society', in P. Boettke (ed.), *The Legacy of F. A. Hayek: Politics, Philosophy, and Economics*. Aldershot, U.K.: Edward Elgar.

Brennan, G. and J. Buchanan (1985), *The Reason of Rules: Constitutional Political Economy*, Cambridge: Cambridge University Press.

Brennan, G. and Lomasky, L., 1993. *Democracy and Decision: The Pure Theory of Electoral Preference*, Cambridge: Cambridge University Press.

Buchanan, J. (1975), *The Limits of Liberty – Between Anarchy and Leviathan*, Chicago: University of Chicago Press.

Burnham, W. (1982), "The Constitution – Capitalism and the Need for Rationalized Regulation," in R. Goldwin and W. Schambra (eds.), *How Capitalistic is the Constitution?*, 75-105. Washington, DC: American Enterprise Institute.

Caplan, B., 2002. Sociotropes, Systematic Bias, and Political Failure: Reflections on the Survey of Americans and Economists on the Economy. *Social Science Quarterly* 83(2), 416-435, June 2002.

Connor, S. (ed.) (2004). *The Cambridge Companion to Postmodernism*. Cambridge: Cambridge University Press.

Daly, G. (1985). 'Catholicism and Modernity'. *Journal of the American Academy of Religion*, 53 no. 3.

de Jasay, A., 2003a. A Tadpole Constitution, Part I: How Confederacy Could Turn into a Federal Superstate. Library of Economics and Liberty, www.econlib.org.

de Jasay, A., 2003b. A Tadpole Constitution, Part II: Majority Rule by Any Other Name. Library of Economics and Liberty, www.econlib.org.

European Constitutional Group, 2004. The constitutional proposal of the European Convention: an appraisal and explanation. *Journal of the Institute of Economic Affairs*, Volume 24, No. 1, March 2004, 22.

Franklin, D. and M. Baun (1995), *Political Culture and Constitutionalism: A Comparative Approach*, Armonk, NY: M.E. Sharpe.

Furubotn, R., Richter, R., 2000. *Institutions and Economic Theory: The Contribution of the New Institutional Economics*. Ann Arbor: The University of Michigan Press.

Gellner, E. (1992). *Postmodernism, Reason and Religion*. London: Routledge.

Gordon, S. (1976), "The New Contractarians," *The Journal of Political Economy*, Vol. 84, No.3 (Jun. 1976), pp. 573-590.

Habermas, J. (1983). 'Modernity: and incomplete project', in H. Foster (ed.) (1983), *The Anti-aesthetic: Essays on Postmodern Culture*. Seattle: Bay Press.

Hampson, N. (1991). *The Enlightenment: An Evaluation of its Assumptions, Attitudes and Values*. New York: Penguin.

Hardin, R. (1988), "Constitutional Political Economy – Agreement on Rules," *British Journal of Political Science*, Vol. 18, No. 4 (Oct. 1988), 513-530.

Hardin, R., 1999. *Liberalism, Constitutionalism and Democracy*. Oxford: Oxford University Press.

Harvey, D. (1989). *The Condition of Postmodernity: An Enquiry into the Origins of Cultural Change*. Oxford: Basil Blackwell, Ltd.

Hayek, F. A. (1960), *The Constitution of Liberty*, Chicago: University of Chicago Press.

Hayek, F.A. (1967a), "Notes on the Evolution of Systems of Rules of Conduct," in

Hayek, F.A. (1967), *Studies in Philosophy, Politics and Economics*. Chicago: University of Chicago Press.

Hayek, F.A. (1967b), "The Results of Human Action but not of Human Design," in

Hayek, F.A. (1967), *Studies in Philosophy, Politics and Economics*, Chicago: University of Chicago Press.

Hayek, F.A. (1979 [1973, 1976, 1979], *Law, Legislation and Liberty*, Volumes 1-3, Chicago: University of Chicago Press.

Hayek, F.A. (1979). *The Counter-Revolution of Science. Studies in the Abuse of Reason*. Indianapolis: Liberty Fund.

Hayek, F.A. (1988), *The Fatal Conceit: The Errors of Socialism*. London: Routledge.

Himmelfarb, G. (2004). *The Road to Modernity: The British, French and American Enlightenments*. New York: Knopf.

Howe, M., 2004. The European Court: The forgotten powerhouse building the European superstate. *Journal of the Institute of Economic Affairs*, Volume 24, No. 1, March 2004, 17.

Huysens, A. (1984). 'Mapping the Post-Modern'. *New German Critique*, 33, 5-52.

Kagan, R., 2002. Power and Weakness. *Policy Review* No. 113 (June 2002).

Kurtz, L. (1986). *The Politics of Heresy*. Berkeley: University of California Press.

Langlois, R., 1992. Orders and Organizations: Toward an Austrian Theory of Social Institutions, in: Caldwell, B. J., Boehm, S. (eds.), 1992, *Austrian Economics: Tensions and New Directions*, Boston: Kluwer Academic Publishers.

Langlois, R., 1994. The 'new' institutional economics, in: Boettke, P. (ed.), 1994, *The Elgar Companion to Austrian Economics*. Cheltenham: Edward Elgar Publishing.

Lyotard, F. (1981). *The Postmodern Condition*. Minneapolis: University of Minnesota Press.

Natoli, J., 1997. *A Primer to Postmodernity*. Oxford: Blackwell Publishers.

North, D., 1978. Structure and Performance: The Task of Economic History. *Journal of Economic Literature*, Vol. 16, No. 3 (Sep. 1978), 963-978.

North, D., 1994. Economic Performance Through Time. *The American Economic Review*, Vol. 84, No. 3 (Jun. 1994), 359-368.

Pejovich, S., 2003. Understanding the Transaction Costs of Transition: It's the Culture, Stupid. Forum Series on the Role of Institutions in Promoting Economic Growth, Directed by the Mercatus Center at George Mason University and the IRIS Center, Washington, DC, April 4, 2003.

Petroni, A., 2003. A Constitution for the European Union? Lecture given at the XXVIth Summer University of the New Economy, Aix-en-Provence, September 2, 2003.

Petroni, A., 2004. Perspectives for Freedom of Choice in Bioethics and Health Care in Europe. Paper prepared for Liberty Fund, January 2004.

Pini, J., 2003. La Constitution Européenne. Lecture given at the XXVIth Summer University of the New Economy, Aix-en-Provence, September 2, 2003.

Pippin, R., 1999. *Modernism as a Philosophical Problem: On the Dissatisfactions of European High Culture*. Oxford: Blackwell Publishers.

Porter, R. (2001). *The Enlightenment: Studies in European History*. New York: Palgrave Macmillan.

Putnam, R. (1978), *The Beliefs of Politicians*. New Haven: Yale University Press.

Putnam, R. (1993), *Making Democracy Work: Civic Traditions in Modern Italy*.

Princeton: Princeton University Press.

Prado, F., 2004. Excerpts from an e-mail exchange with the author, November 18, 2004.

Rand, A. (1966), "The Rights of Man" in *Capitalism: The Unknown Ideal*. New York: Signet.

Rials, S., Alland, D., 2003. *Constitution de l'Union Européenne*. Paris: Presses Universitaires de France.

Robinson, P., 2004. Historical lessons for Europe's future in the wake of the EU Convention. *Journal of the Institute of Economic Affairs*, Volume 24, No. 1, March 2004, 5.

Sartori, G. (1965), *Democratic Theory*, New York: Praeger.

Sim, S. (ed.), 2001. *The Routledge Companion to Postmodernism*. London and New York: Routledge.

Voigt, S. (1997), "Positive Constitutional Economics: A Survey," *Public Choice* 90:11-53.

Wenzel, N. (2006), "Whither Constitutionalism after God and Reason? Postmodernism and Constitutional Culture", Hillsdale College Working Paper.

Wenzel, N. (2007a), "Beyond Parchment, Beyond Formal Rules: Constitutional Culture and Constitutional Political Economy," Hillsdale College Working Paper.

Wenzel, N. (2007b), "The Neglected Foundation in Constitutional Political Economy: Constitutional Culture as a Complex Emergent Phenomenon", Hillsdale College Working Paper.

Wenzel, N. (2007c), "Between the Individual and the Constitution: Constitutional Culture as Meso-Institution," Hillsdale College Working Paper.

Wenzel, N. (2007d), "Matching the Formal and the Informal: Constitutional Culture, Parchment, and Constitutional Maintenance," Hillsdale College Working Paper.

Wenzel, N. (2007e), "Constitutional Culture and Constitutional Transfer: Some Historical Notes", Hillsdale College Working Paper.

Wenzel, N. (2007f), "Imposing Emergence? Argentina's Constitutional Culture Rejects the New Parchment (1853-1930)", Hillsdale College Working Paper.

Wenzel, N. (2007g), "Constitutional Culture in Contemporary Argentina: Qualitative Field Research and Quantitative Analysis", Hillsdale College Working Paper.

Wenzel, N. (2007h), "Towards a Research Agenda on the Emergence of (Informal) Constitutional Culture into (Formal) Constitutional Order", Hillsdale College Working Paper.

Wenzel, N. (2007i), "Which Enlightenment, Which Modernity? Humble Scots and Hubristic Continentals." Hillsdale College Working Paper.

Wenzel, N. (2007j), "Incentives and Culture: A Survey on the Economics-Sociology Literature," Working Paper, Hillsdale College and European School of Business.

Wenzel, N. (2007k), "Incentives and Culture: Broadening the Neoclassical Paradigm", Hillsdale College Working Paper.

Yack, B. (1986). *The Longing for Total Revolution: Philosophical Sources of Social Discontent from Rousseau to Marx and Nietzsche*. Princeton, NJ: Princeton University Press.

Zuckert, C. (1996), *Postmodern Platos*. Chicago: University of Chicago Press.