by Srdja Trifkovic

European Disunion

In early 1980, the Soviet Union appeared to be more powerful than ever before. Its hold over Eastern Europe had been sealed in Helsinki five years previously. Its presence or influence in the Third World was rising, while that of the United States was diminishing. The notion of its eventual demise was dear to a few diehard Cold Warriors, but even they viewed it as a possibility distant in time and fraught with nuclear dangers. Within a few years, however, the war in Afghanistan, the challenge of Ronald Reagan, the unrest in Poland, and the inability of the Kremlin gerontocracy to find a viable successor to Brezhnev revealed many structural weaknesses of the empire of "real socialism." Gorbachev's ineptitude helped turn the crisis of the system into the crisis of the state. By 1991, the Soviet Union was dead and gone.

It is too early to tell whether the rejection of the proposed European Union constitution by the voters of France (May 29) and the Netherlands (June 1) heralds the beginning of a similar downward slide in Brussels, but the parallel appears apt. Only a year ago, in the aftermath of its expansion to 25 member countries, the European Union appeared poised to become a superstate of some half-billion people. The euro was strong, while Euroskepticism appeared weak and confined to the union's British fringe. A team of dedicated federalists had completed drafting its constitution, a document Jacobin in sentiment and in style: radical, secularist, progressivist, militantly humanist, and anti-Christian. A few commentators—myself included—warned that the edifice based in Brussels was fundamentally flawed because it was artificial and lacked the consent of the governed, but nobody could foresee that the unsoundness would become apparent so soon.

Today, the European Union is in crisis, and that crisis has three key aspects. The rejection of the constitution has marked a decisive defeat for the proponents of a single European superstate. The European Union's latent budget crisis—not resolved at a rancorous summit in Brussels last June—is becoming acute. More important yet is the dispute over whether the European Union should reinvent itself as a dynamic, competitive common market in order to succeed in the global economy.

The fact that Great Britain assumed the presidency of the European Union on July 1 has great significance on all three issues, especially on the last one. Under Britain's presidency, we shall see the ideological clash between the spirit of the "Old Europe" epitomized by France and Germany, which seek to uphold the 1960's dirigiste "social model," and the demand for a leaner, meaner, more flexible Europe. Prime Minister Tony Blair believes that the "reality check" initiated by the defeat of the constitution will help him prevail. The British presidency will be marked by the demand for reduced interference from Brussels and the insistence that increased competitiveness is the only way for the Old Continent to avoid being left behind in the global economy.

The pretense that the old show can be kept on the road was maintained somewhat uneasily by the federalists, who pledged to press ahead with the planned ratification process. Chancellor Gerhard Schröder and President Jacques Chirac said they "were in agreement that the constitutional process must continue so that the views of each country are respected." Carl Bildt, former prime minister of Sweden, declared that the lesson of the referendum was not that enlargement should be abandoned but that it should be anchored in a more open debate:

> We cannot go further and faster than the citizens of Europe are prepared to tolerate—but we should recognize the fundamental difference in a capitulation to populism. It is leadership that is called for if abandonment of the soft power of Europe and a slide into instability are to be avoided.

Such hot air and desperate bombast notwithstanding, the proposed E.U. Constitution Treaty is dead. The implicit hope that Messrs. Bildt, Schröder, Chirac, and their ilk entertain—that the referendum in those two founding-member states can be repeated, and a different result obtained—reflects the arrogance and contempt for democracy of the Euro-federalist elite class. That class refused to accept Denmark's rejection of the Maastricht Treaty *via* referendum in 1992 and repeated it the following year, when the "yes" vote prevailed thanks to an unprecedented media blitz by the proponents of the closer union. In 1991, the voters in Ireland caused another upset by rejecting the Nice Treaty in a referendum. This caused dismay in Brussels, but the Irish were also induced to reverse that decision a year later, in a virtual replay of the Danish scenario.

Admittedly, the motives of many French and Dutch "no" voters had little to do with the nature of the superstate project. Many of them simply wanted to punish unpopular governments for lackluster economic performance; others feared the winds of change *per se*, and, in France, the left accused the proponents of the E.U. constitution of seeking to dismantle the welfare state and undermine job security. But the rejection of further integration was nevertheless central to the voters' decision. It was a bitter blow to the credibility and legitimacy of arguably the most ambitious political project the world has yet witnessed, and especially to the French governing elite, who had been both the architects and builders of the European Union ever since Jean Monnet conceived it over half a century ago. The "yes" camp could not mount a credible countercampaign, based on the argument that "Europe" should not be punished for the domestic shortcomings of President Chirac or Prime Minister Balkenende. For the first time ever, two of the original six members have rejected a major European treaty.

In the Netherlands, the issues of sovereignty, identity, and immigration were openly raised in the referendum debate,

and the genie so loathsome to the European elite class is now out of the bottle. In what is arguably Europe's most "tolerant" country, the notion that a nation with shared blood and history has the right to her land and customs has become a legitimate mainstream argument. Perhaps Theo van Gogh did not die in vain.

On the economic front, the outcome in France and Holland will have beneficial effects, too. The dirigiste Franco-German consensus will now retreat before a more vigorous competitive spirit favored by Britain and supported by Finland, Ireland, and a few new members in Eastern Europe. If the CDU's Angela Merkel unseats Chancellor Schröder at the forthcoming general election in Germany, as seems likely, Germany will join them by introducing much needed tax and labor-law reforms. More important still, the eastern end of the old Paris-Berlin axis will disappear. That would pave the way for the center-right reformer Nicolas Sarkozy, Chirac's archrival, to bring a breath of fresh air into the Elysee Palace in 2007.

The proponents of E.U. reform have a rare opportunity to use the moment of weakness and dismay in Paris and Berlin to induce long overdue change. The advocates of the old "social model" have neither a plan nor a strategy to resist Blair's intention to reduce Brussels to the role of a bursar serving the states. His advocacy of an essentially liberal-capitalist model indicates just how far his "New Labour" has moved from its socialist roots. He is now hoping for the defeat of Herr Schröder, as a CDU-CSU government would likely support his agenda. Germany's conservatives are not Euro-skeptics, but they favor reform. Berlin's *Die Welt* reflected their position when it warned that the European Union is in turmoil because a pragmatic economic community has turned into an opaque and complex edifice:

> The solution will not be to pursue more and more integration policies. On [the] contrary, Europe consists of functioning states, which are interested in the rule of law, peace, trade and growth. Why should they be dissolved into an overstretched structure? . . . Europe's goal must be a free trade area of sovereign states, not a completely harmonized giant region.

This view is light years away from the federalist rhetoric that had prevailed in Brussels, Paris, and Berlin until a few months ago. It is echoed all over Europe. Continental editorialists and analysts now urge Tony Blair to seize the opportunity to offer a clear prospect to Europeans on what interests them the most: employment, the economy, organized crime, and immigration.

Blair would be well advised to go even further. In a fine analysis in the London *Times* (June 30), Anatole Kaletsky insisted that Blair should do something unthinkable to Europe's political classes but blindingly obvious to voters: demand the return of powers to national governments from Brussels.

> In diplomatic jargon, he must start to unravel the acquis communautaire. The acquis is a convention that asserts that any responsibility transferred to Brussels can never be renationalised. It guarantees an irreversible accretion of power to the EU. Mr Blair should, as a matter of principle, announce his opposition to this anti-democratic juggernaut. He should show what he means in practice by proposing repatriation of specific policies, starting with issues such as regulations on working time and consumer protection, but aiming eventually for the biggest and most expensive policy—agriculture.

He should also emphasize the diversity of Europe, Kaletsky insists, by rejecting the concept of a single economic model to be followed by every E.U. country, because Europe is not a single economy. It is a single market, a community of democratic nations, whose citizens choose different economic and social priorities. It needs national policies based on each member's independence, reinforced by competition and an awareness of what works or fails in other countries. Britain cannot force France to adopt the competitive model, but she can offer an effective example of privatization and financial reform. Her shaky National Health Service and declining railways, in turn, would be well advised to check out the French model. Europe should be based on an implicit unity in practical diversity, with each country free to maintain her social traditions.

There is no rational reason why the European Union has to proceed on the road of ever-tighter political and social integration. There is even less reason for the European Union to seek a "global" role akin to that currently played by the United States; our imperial endeavor is meaningless, costly, and ultimately self-defeating. "Europe" should halt. The process of integration has removed internal barriers to the movement of goods, services, capital, and people, and it has rendered violent conflict among its members well-nigh unimaginable. That is enough, not only for now but for years to come. Further integration would be detrimental to the diversity essential to the preservation of spontaneously willing unity. Further enlargement should be put on hold. And, even if it is eventually resumed, it has to exclude Turkey.

If the federalist spirit prevails—and it is certain that the proponents of the superstate will not give up easily—we must hope that the European Union will share the fate of the Soviet Union. The concepts of "an ever-tighter Union" and "the Socialist Community" share similar roots and produce similar fruits. The *Weltanschauung* of Brussels, like that of the Kremlin under Lenin and his heirs, denies any divine intent in history and rejects man's duty to conform to immutable laws of morality. Both ignore the value of order, stability, and tradition—the method of nature—as the foundation of any good government. Both proudly fail to recognize any limits to man's reason. Both are guilty of pushing the Old Continent along the path of moral, spiritual, and demographic self-liquidation.

Europe's survival is in doubt, and its revival is possible only if its historic nations reassert their identity and rediscover their Faith. The defeated E.U. constitution would have made both those goals unattainable. Its consignment to the dust heap of history is a relief to all true Europeans and a rare piece of genuinely good news to their American cousins.

THE COURTS

Crying "Halt!"

by Stephen B. Presser

A federal judge whom I know lamented that the Supreme Court term that ended last June was the worst in recent memory. That judge loves the Constitution but could find few signs that this term's key decisions were based on that document. A Court that can rule that medical marijuana grown for home use substantially effects interstate commerce; that states and localities may take for a "public purpose" the land of A to give to another private party, B, who will generate more tax revenues; and that it is permissible to display the Ten Commandments on public property when they have been there for 50 years but not when they have recently been installed is engaged in some very bizarre jurisprudence.

Still, there were some salutary developments. The Supreme Court trashed the federal government's wrongful prosecution of the once-venerable Arthur Andersen accounting firm. (It was a Pyrrhic victory, however, since Andersen's thousands of employees have gone on to other places, and the company could not be resurrected.) The Court did also, in a sense, protect private property when it held that peer-to-peer file-sharing operations such as Grokster could be held responsible for their users' breaches of copyright and when it ruled that cable operators could not be forced to allow competitors access to their lines. Neither of those were predictably popular decisions—the first, because it must have disappointed millions who had been downloading music for free, and the second, because it will allow the few giant cable firms to continue something close to monopoly pricing. Still, both of those decisions were at least principled and, in a sense, courageous. And the Court pleased us oenophiles when it ruled that a state may not bar internet wine sales from out-of-state wineries if it permits them for in-state wine producers.

One could also discern that the Court was playing both sides against the middle, as it did most prominently in the two Ten Commandments cases. Advocates of separation of Church and state were delighted by the ruling that recent attempts to have the Ten Commandments placed in Kentucky courthouses were impermissible; members of the Moral Majority were pleased when the Court decided that the monument to the Ten Commandments on the grounds of the Texas state capitol could stay. Property-rights advocates should have been happy with the file-sharing and cable cases, if appalled by the "public purpose" eminent-domain case. Advocates of increasing the power of states and localities might have been pleased by the eminent-domain case but concerned about the wine one.

It is risky to impute a collective mind to a Supreme Court that has for so long consisted of shifting five-person majorities (the usual shifters were Justices Anthony Kennedy and Sandra Day O'Connor, but, in the Ten Commandments cases, the elusive justice was Stephen Breyer), but at least the swing justices may believe that it is important to create a sense of moderation, in order to discourage criticism of the Court, in general, or to keep from giving the Republicans a strong political issue, in particular. If the Court had, for example, completely neglected property rights or thrown out all Ten Commandments displays on public property, President Bush, like President Roosevelt before him, would have been able to claim it necessary to save the Constitution from the Court and the Court from itself.

If that was the strategy—to remove the Court from politics and to get another "moderate" on the bench—one can only hope that it fails and that President Bush, in appointing John Roberts, did not heed the siren song currently being sung by the Democrats in the Senate that, because the retiring Justice O'Connor was a "moderate," she must be replaced by another "moderate" in order to maintain "balance." That is, of course, code for the proposition that, since O'Connor voted not to overturn *Roe* v. *Wade*, the President must appoint a like-minded jurist, else the Democrats will be able to reject the nominee as an "extremist." In judicial selection, as in most American politics, the "moderates" are simply those you agree with; the "extremists," those you don't.

If what this Court has been engaging in is moderation, moderation is not what it was when I was young, because, whatever decisions the Court may have rendered this term, the primary casualties, as usual, were the rule of law and popular sovereignty. Instead of exercising moderation, the Court underscored how arbitrary it can be; how infrequently constitutional law dictates the result in politically important cases, such as those involving religion, race, abortion, and private property; and how important it is that President Bush fulfill his campaign pledge to appoint judges similar to Associate Justices Antonin Scalia and Clarence Thomas. Those two, the President said during both of his campaigns, understand that it is not the job of judges to legislate and that the Constitution should only be interpreted according to its original understanding. Any other interpretive strategy makes the judges lawmakers, which is a betrayal of their role, limned in *Federalist* 78, as the agents of the people.

Very possibly, the Supreme Court (or the slippery justices) may have outsmarted themselves, because their hopelessly inconsistent and, in some cases, plainly wrong decisions only clarify the need for a serious course correction. One or two more "moderate" appointments like Kennedy, O'Connor, or Breyer, and we can kiss the chance of the kind of jurisprudence ostensibly embraced by the President goodbye—at least for the next few decades.

Of all the significant cases decided by the Court this term, the "takings" case, *Kelo* v. *New London*, was the most shocking. In it, the Court held that New London could take Susette Kelo's home (presumably providing "just compensation," although valuing property, particularly in the context of governmental expropriation, is a chancy business) in order to allow private development of the property, which would generate more tax revenues for New London. The Fifth Amendment does permit governmental taking—with just compensation—of private property, but only "for public use." Until *Kelo*, "public use" had usually been thought to mean purely governmental undertakings, such as highways, official buildings, or perhaps public-housing projects. In *Kelo*, however, the Court appeared to permit any state or locality to take private prop-