

Prologue

I was born in 1941, into a highly political family, deeply engaged in the Scottish national movement that finally resulted in a re-established parliament in Scotland in 1999. I came to consciousness in the circumstances of war and its aftermath. Gradually becoming aware of a political world beyond Scotland, and then beyond the UK, I did not grow into even a vague and instinctive belief that peace, stability, and democracy would become dominant characteristics of continental Europe. To my childish eyes, there seemed an abundance of danger and instability.

From the vantage point of 2005, things look very different. Complacency in the face of declining electoral participation would be misplaced. Even so, democratic institutions and the habits of democratic life — free speech, mutual tolerance, jaw-jaw rather than war-war, settling issues by debates and votes — are deeply embedded in the way of life of northern, western, and southern Europe, and seem to be taking root successfully in middle and eastern Europe as well. Through the Council of Europe and the Court of Human Rights, respect for fundamental rights is everywhere substantial, and growing always more deep-rooted.

The countries of the European Union have played a particularly strong part in the consolidation of democracy and human rights. They have developed a single market (still by no means a perfect one) in which the decent prosperity of others becomes the key to one's own decent prosperity, not a threat to it. Ordinary Europeans in these countries are better off than their ancestors, and have experienced a longer period of internal peace than ever in their history heretofore. Enlargement of the Union offers the prospect of similar benefits to countries with less fortunate recent histories.

It would be false to claim that the existence of the European Union was the sole or perhaps even the dominant cause of all the benign developments of which I speak. NATO and the American involvement it guaranteed, mutual defence in the Cold War, the Council of Europe as distinct from the Community or the Union — all these and others belong prominently in any account of the transformation of Europe in the second half of the twentieth century. But no such account could fail to place the development of the European Communities — the Coal and Steel Community, the Economic Community, and Euratom — and then (since 1992) of the European Union as belonging among the vital elements of these changes. The European Union is far from faultless, but it has nevertheless been massively positive in its overall contribution to the lives of Europeans.

‘If a thing ain’t broke, don’t fix it’ is ancient wisdom. Anyway, ancient or not, it is a wise saying. This short book may seem to fly in its face. For it contains arguments in favour of adopting the currently proposed Constitution for the European Union (one which, perhaps too grandly, styles itself simply a ‘Constitution for Europe’). I argue for fixing what seems to be an unbroken thing. I do so in a dual capacity — first as a philosopher of law and long-term student of problems in legal and political theory; secondly, as one who had the opportunity to participate in the Convention on the Future of Europe. To that Convention fell the task of seeing whether it would be possible to draft a sensible, workable, and acceptable constitution for the EU, replacing the current Treaties that define and empower the Union and its Institutions, but sustaining continuity with the mainly successful developments of the past half-century.

Truly, the thing ain’t broke. But it is seriously flawed. Above all, it is not yet sufficiently democratic in its organisation. The ‘democratic deficit’ in the European Union is real, and really needs to be fixed. That is, to my judgement, what this proposed constitution is really for. The argument for this starts in Chapter 1.

Before then, I have several debts of gratitude to acknowledge. First is to Imprint Academic, the publishers *Societas*, and to Professor John Haldane for introducing me to them. I share their sense that it should be possible for serious ideas to be presented to a concerned public, drawing on the vast learning of philosophers and theorists in such domains as politics and law, yet presenting big ideas briefly,

and in plain and approachable terms. I hope this book will make a contribution to this.

If it does, it will also be partly on account of the book's origins. In October 2004, I was invited to present the 2005 Gregynog Lectures in the University of Wales at Aberystwyth, under the title *Europe: A Democratically Constituted Union?* and during the latter part of 2004 and early 2005, I have fulfilled invitations to lecture on connected themes in my home University of Edinburgh, and in the University of Cambridge, Strathclyde University, Birkbeck College and King's College in London, and this has followed on visits during the Convention and its aftermath to universities and other fora in Bari, Florence, Warsaw, Inverness, Glasgow, Perth, with preparations also to speak later in 2005 in Cornell, Texas, Sydney, Granada and Berlin. All this has provided opportunities to clarify and improve the message I am trying to impart, and to correct obvious errors – though doubtless quite a few remain.

Political friends and colleagues in the Scottish National Party and in the Group of the Greens and European Free Alliance in the European Parliament during 1999 to 2004 supported me and gave me the opportunity to participate in the Convention, an extraordinary opportunity for someone with my intellectual and academic interests and background.

I owe great debts to my own parliamentary assistants in that period, Flora MacCormick, Craig Munro, Rina Moore, Elizabeth Skinner and Sheena Cleland, who in particular helped in putting together a political pamphlet *Europe: a Union of its Own Kind?* published with the support of the Greens/EFA Group in 2004, in which some of the arguments presented here got a first airing.

Finally, in all my present work I have a vast debt to the Leverhulme Trustees for the grant of a Personal Research Professorship, held at the Law School of the University of Edinburgh for the purposes of research on 'Law, State and Practical Reason'. I hope it will be obvious that this book belongs in the relevant body of work.