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The Quest for a Vision for
Europe: Lessons to be learned
from Dutch and German
Debates on the Future
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Union

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The Quest for a Vision for Europe: Lessons to be learned from Dutch and German Debates on the Future Democracy of European Union

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In November 2012, a day before Dutch Prime Minister Mark Rutte went to Brussels to join the EU summit, he apologized in Parliament for being not very specific about his efforts in the negotiations. He said he has to speak “with his mouth full of meal”, meaning that he could not answer the questions of the Members of Parliament in detail.¹ After arriving in Brussels, he confirmed his position by stating that he had come to the EU summit with a loaded gun in his pocket and that it would not be in the Dutch interest to lay down his pistol on the table immediately. In its vagueness, Rutte’s stance is in line with the Dutch EU policy, which is traditionally seen as part of the foreign policy domain. Seen from this perspective, Dutch politicians should not be too open in public about their strategy, since this could harm their position at the EU negotiation table.

For several reasons, one may ask whether this position is still accurate. Since the Treaty of Maastricht, the EU has become a policy domain far beyond the field of foreign affairs, concerning not only all ministries, but above all, the peoples of the member states. Therefore, democratic legitimacy and parliamentary control has become an important issue. One might ask why Dutch parliament allows its Prime Minister to keep his gun in his pocket. An active parliament should urge the Prime Minister to clearly state his aims on such an important issue. If politicians want to convince their voters of the necessity of an active and committed Dutch EU policy, they should at least determine the course. Since a debate about the democracy in Europe is not prioritised by Dutch politicians, the Dutch people could get the feeling of being tricked by bureaucrats into an ‘ever closer union’ without democratic legitimacy. In search for a European public, politicians of the member states should declare themselves openly in favour of a direction of a future Europe, whatever that direction may be.

Both in the Netherlands and in Germany, the public follows the European integration process with a critical attitude. The German public is even more critical of the European

¹Tweede Kamer, 21 November 2012, <http://debatgemist.tweedekamer.nl/debatten/het-debat-over-de-europese-top>, viewed at 15 March 2013; I would like to thank Rob Wellink and Sven Bergmann for their internship research on the debates in the *Tweede* and *Eerste Kamer*, the *Bundestag* and *Bundesrat* on the European Convention and the Draft Treaty establishing a Constitution for Europe. It was a great pleasure to cooperate with them. Also, I would like to thank Dick Smakman, Leiden University, for his corrections; all mistakes are mine.

institutions than the Dutch. The difference in the German and Dutch trust-distrust ratio for the European institutions is significant: while in the Netherlands 55% trust, and 33% distrust the European Commission, in Germany only 35% trust and 44% distrust the Commission. Remarkably, these differences are less significant with respect to the European Parliament. While in the Netherlands 51% trust, and 40% distrust the Parliament, in Germany 44% trust, and 43% distrust it.² These figures illustrate a divide within both societies, since the people who expressed ‘no opinion’ are a small minority. Interestingly, the reactions of Dutch and German politicians on these statistics differ. While in the Netherlands, the public doubts have led to reserved remarks of politicians about the necessity of debating the prospects of the EU, in Germany politicians discuss this issue thoroughly. As Herman van Rompuy asserted in a *Buitenhof* broadcast, German political parties hold thorough debates on the future of the European Union.³

In this paper, I will compare the Dutch and German political debates on the future of the EU. I will argue that Dutch politicians could learn from the German EU policy, which comprises the cabinet, parliaments, states, and institutions of the Federal Republic. Dutch politicians could learn from their German neighbours how to make a complicated matter comprehensible for a larger public. In Germany, future prospects of the EU are well discussed by all political parties. Since the interests of the various stakeholders, particularly of the German Houses of Parliament, are well defined and defended, the public debate is less capricious than in the Netherlands.

In the first two sections, I will discuss the contributions of German and Dutch political leaders to the debates on the future of the European Union. I will show how their discussions have changed in style since the Treaty of Maastricht, particularly in Germany, and how they differ between the two countries. Then, I will analyse the parliamentary debates on the future of the EU by a concrete example: the Convention for the Future of Europe, held from February 2002 until July 2003, to examine questions about the future democracy of the European Union and its member states. I will analyse the debates of the German and Dutch parliaments. How did they discuss their role in this process? How did they defend their parliamentary interests in this EU-body? And why was the Convention approached in various ways in both countries? In my conclusion, I will explain the different strategies in the Netherlands and Germany.

² TNS Opinion and Social, *Standard Eurobarometer 77*, Spring 2012, 82-85.

³ Buitenhof, 24 February 2013, <http://www.uitzendinggemist.nl/afleveringen/1328252>, viewed at 15-3 2013

Future visions of the EU and domestic political culture in Germany

In this paragraph, I will first compare the style of Helmut Kohl and Angela Merkel, regarding their EU policy, after which I will discuss the contributions of two other leading German politicians, as well as the debates in the Houses of Parliament.

In many ways Merkel's policy could be characterized as building further on Kohl's heritage. Yet, Helmut Kohl criticized his former protégé Angela Merkel in 2011 for the lack of a reliable course in foreign policy issues. Although he primarily referred to the hampered relations with the United States after the Libya crisis, he criticized the Merkel government as well for its hesitant attempts to save the euro zone and its modest willingness to help countries like Greece deal with the economic crisis. Kohl missed a reliable course in German foreign policy and called on the German government to make clear where the country stands for and where it is heading. According to Kohl, Europe needed energetic action and a package of forward-looking, intelligently thought-out measures free of ideology with which we could get the EU and the euro back on track and secure our future.⁴ Merkel reacted with respect for her former tutor, whose merits for the German reunification and European integration could not be underestimated, but she asserted as well that each period has its own specific challenges.

Merkel's challenge is to find solutions for the sovereign debt crisis, together with the partners, while taking the European treaties into account. Of these treaties, the Treaty of Maastricht has been the most important. The no-bailout clause and the ceilings of the government budget deficit to a maximum of 3% and a public debt to 60% of GDP were laid down in Maastricht. However, since the politicians of the member states decided over the implementation of these legislative acts, they had a rather permissive character. Even after the Stability and Growth Pact entered into force in 1998/1999, it was possible to adapt these directives temporarily, as chancellor Schroeder and president Chirac showed in 2005. It is exactly this adaptation of the rules, which Merkel wanted to prevent after she became chancellor. Particularly after the credit crunch, she spent a lot of energy in ensuring those regulations and directives, which were already laid down in Maastricht by, amongst many others, Helmut Kohl. Merkel's main policy goal is to repair the errors of Maastricht.⁵

So what was the proposed difference between the elder statesman and his daughter in politics? The answer to this question is to be found particularly in the style and rhetoric of

⁴ Henning Hoff, Joachim Staron en Sylke Tempel, "Wir müssen wieder Zuversicht geben" Helmut Kohl über eine Außenpolitik, der es an Verlässlichkeit mangelt', *Internationale Politik*, 24 augustus 2011.

⁵ See also: Kurt Biedenkopf, 'Mehr Ehrlichkeit in de Euro-Debatte, bitte!', *Die Welt*, 27-08 2011.

both chancellors.⁶ Kohl's room for manoeuvre was much larger than Merkel's. In line with this, Kohl's speeches were full of historic references and wide views on the future of Europe. In one of his speeches, in May 1991, Kohl stressed the necessity of building a stable, just and peaceful order in Europe, which brings all people in freedom together. He asserted to strive for a political union, for the United States of Europe, and for a strong position of the European Parliament, which should resemble the competences of the national parliaments.⁷ Kohl supported the strengthening of supranational institutions, particularly the European Parliament. He was not fond of the intergovernmental method of decision-making via the European Council of ministers, since this was seen as the policy domain of the member states, rather than the Union as a whole. However, in September 1991, when it had become clear to Kohl that he could not achieve his goals, he quietly distanced himself from his earlier point of view. From that moment onwards, he supported a stronger, formalised position of the European Council. Kohl's long-term view of the United States of Europe suddenly appeared to have another outcome. This led to many misunderstandings, in the first place with the Dutch administration, which held the Presidency of the Council of the European Union. In their ambition to give the European Parliament and Commission more power, Dutch ministers Piet Dankert, Hans van den Broek and Prime Minister Ruud Lubbers vainly counted on Kohl's support. This diplomatic miscalculation led to what in the Netherlands is known as Black Monday, September 21, 1991, when the Dutch Presidency had to withdraw its proposal for a political union. Kohl's reputation as the unification chancellor was thus firm, that he could easily change his strategy, without being called to account by the German parliament.

For several reasons, this freedom of manoeuvre for the German chancellor is nowadays limited. Angela Merkel has to operate in a much more complicated policy arena, in which she not only has to reckon with 26 other member states, but also with a stronger European parliament and commission and above all a stronger federal parliament at home and with the European Central Bank, the IMF and the markets. Particularly relating to the sovereign debt crisis, everything she says carries much more weight. While Kohl time and

⁶ See also the unpublished master theses of Tjeerd Stobbe, *Tussen ideaal en ontzuivering. EU-beleid en discours van de Christlich Demokratische Union Deutschlands (CDU) ten tijde van de totstandkoming van het Verdrag van Maastricht en de Europese staatsschuldencrisis* (Amsterdam 2012) and Victor Hooft, *Van lelijk eendje tot politica van internationale allure, De beeldvorming over Merkels leiderschap in de Nederlandse dagbladders* (Amsterdam 2013).

⁷ Helmut Kohl, *Aufgaben deutscher Politik in den neunziger Jahren*, Georgetown University, Washington DC, May 20, 1991, http://helmut-kohl.kas.de/index.php?menu_sel=17&menu_sel2=126&menu_sel3=&menu_sel4=&msg=1395, viewed at 15 March, 2013.

again underlined the importance of accelerating the European integration process, Angela Merkel stresses the importance of taking small steps.

Merkel held two keynote speeches on the future of the European Union and the role of Germany within the EU. Both speeches were modest in its ambition, but yet programmatic. In her 2009 Humboldt lecture on Europe, Merkel said that the EU, as a community, is based on shared values such as basic rights, peace, climate protection and a competitive social market economy. Merkel is not fond of debates on the finality of the European Union, which could add to a lack of confidence in the current state of affairs. Instead of discussing long-term objectives, she urged to speak about the necessary steps to make in the near-term. She asserted that the EU is not a state, and should not become one. Since the EU is one-of-a-kind, analogies with a state or with state law are needlessly confusing. Also, she included a clear message for other EU member states. Merkel rejected strongly any separation within the EU. After the credit crunch, this was an important statement, both for the Eurozone and for the EU as a whole. She rejected a two-speed Europe, as well as a separation of weaker member states.⁸

Her second keynote lecture on the EU, held in 2010 in Bruges, was modest in ambition and programmatic as well. She spoke about the - in her view - false opposition between the community method of the European Commission and European Parliament on the one hand and the intergovernmental method of the European Council on the other. Merkel stressed that the Council, composed of representatives of the member states, is part of the European legislative process as well. Not the intergovernmental or supranational method is decisive for European integration but a coordinated action, which involves all stakeholders in a spirit of solidarity: “each of us in the area for which we are responsible but all working towards the same goal.”⁹ She calls this process of decision making the new Union Method. Her speech prophesised her policy to strengthen the European Council to combat the sovereign debt crisis.

Merkel is not the only important German politician who held programmatic speeches on the prospects of the European Union. When her powerful Minister of Finance Wolfgang Schäuble in 2012 received the Charlemagne Prize (*Karlspreis*), he pointed out his views on the future democracy of the European Union. Schäuble called for comprehensible, strong and decisive European institutions which are democratically legitimated. To realise this, the

⁸ Angela Merkel, Humboldt-Rede zu Europa, May 2009, http://www.hu-berlin.de/pr/medien/aktuell/reden/humboldt-rede_merkel, viewed at 15 March 2013.

⁹ Angela Merkel, Speech at the opening ceremony of the academic year of the College of Europe, November 2010, <http://www.bruessel.diplo.de/contentblob/2959854/Daten/>, viewed at 15 March 2013.

European President, as head of the European Commission, should be elected directly by the European people. Europe's political unity must have a face, and that face must represent a legitimate power. Other than Merkel, Schäuble distanced himself from the current policy of compromises. He proposed a full executive power of the European Commission, controlled by two chambers, the European Parliament and the European Council. To realise this, pragmatism and flexibility is more needed than high principles, since upholding principles could lead to a standstill.¹⁰

Also in 2012, the German Federal President Joachim Gauck held his first public speech on the prospects for the European idea, in which he discussed the rising indifference in Germany and the fragile European identity. According to Gauck, the European identity consists of shared values, and could be strengthened by a common language, English, and a European *agora* where the people of Europe meet. He pleads for further harmonization within Europe, not only in finance and economics, but also in the field of foreign, security and defence policy. As President, he also has a message for German politicians, who should act less cold-heartedly by showing empathy for the situation of others. German politicians must make clear that for them more Europe means a European Germany.

One may ask whether these speeches have any effect on the German EU-policy. Political scientists are not always interested in what people say but in what countries do. Seen from a structural point of view, these speeches are less informative. However, their function should not be underestimated. Since the German EU policy is shaped by a wide variety of actors and the federal policy is carried through at various levels, such as the *Länder* (the states), the federal parliaments, and the federal state, I think it is important for Germany to discuss these issues at large. Germans themselves often see those multi levels of German governance often as a sign of inefficiency. It tends to take the German government long before it is able to make up its mind in Brussels. However, in the end, it might be more efficient, since the German EU policy is broadly based, despite a critical public attitude.

The *Länder* have an important say in the German EU policy. They all have their own embassies in Brussels, which are primarily used as lobby-institutions. More importantly, they put pressure on the German federal government via the *Bundesrat* (Federal Council), which, as a legislative body, represents their interests. After the Treaty of Maastricht, the *Bundesrat* even gained the right to delegate a representative to the European Council, when those affairs are discussed, which are the responsibility of the *Länder*, such as culture, media, education,

¹⁰ Wolfgang Schäuble, 'Dankrede', Karlspreis, 2012, http://www.karlspreis.de/preistraeger/2012/rede_von_dr_wolfgang_schaeuble.html, viewed at 15 March 2013.

and public security. However, the *Bundesrat* never executed this right, since the *Länder* realised that they could better influence the federal government in Berlin first. Also, the federal government could better represent their interests in Brussels than they can do themselves.

Also the *Bundestag* (Federal Diet) has an important say in European affairs. After the Treaty of Lisbon, the German Constitutional Court judged to strengthen the position of the Diet to avoid unnoticed or unwanted transfer of sovereignty. Since, the chancellor is obliged to visit the *Bundestag* right before every EU-summit to discuss at length her or his strategy. Here, the chancellor often uses the opportunity to defend her strategy publicly and often also to inform other member states on forehand where she stands, as part of a negotiating strategy. The debates in the *Bundestag* are lively, often hot-tempered, and attended very well. While the party leaders point out their general views of the EU, the Members of Parliament often applaud, laugh and sometimes whoop with joy. The *Bundestag* is developing new legislation to cooperate with the cabinet more strongly on European Affairs, and to be better informed in advance.¹¹ Outside Germany, this position of the *Bundestag*, which act as one of the Masters of the Treaties (*Herren der Verträge*), is often seen with a mixture of awe and surprise.

Future visions of the EU and domestic political culture in the Netherlands

Dutch politicians are not very well known for holding keynote speeches on the Dutch EU policy.¹² This surely has to do with their pragmatic approach. Discussing long-term prospects of the future society does not appeal to them. They would rather leave these issues to their advisers or to the academic world.¹³ In 2012, Prime Minister Mark Rutte repeatedly stated that institutional prospects of the EU will not solve financial problems in Greece. As the leader of the Dutch liberal party, Rutte focuses on all instruments necessary to maintain the free market. Political institutions should uphold the European economic freedom, but they should not rule over any terrain which could be organised better by national governments. Before getting into office, Rutte was very critical of the European ‘happiness machine’,

¹¹ Deutscher Bundestag, Entwurf eines Gesetzes über die Zusammenarbeit von Bundesregierung und deutschem Bundestag in Angelegenheiten der Europäischen Union, Drucksache 17/12816, 19-03. 2013.

¹² Henk te Velde, ‘De premier was nooit een spreker’, *NRC Handelsblad*, 24 februari 2013, see also *ibid.*, *Stijlen van leiderschap, Persoon en politiek van Thorbecke tot Den Uyl* (Amsterdam 2002).

¹³ Wetenschappelijke Raad voor het Regeringsbeleid, *Aan het buitenland gehecht over verankering en strategie van nederlands buitenlandbeleid* Raad (Amsterdam 2010), Raad van State, *Advies W01.12.0457/1* over de democratische controle bij hervormingen in het economisch bestuur in Europa, januari 2013.

created by a web of ‘unnecessary subsidies’.¹⁴ Therefore, it is understandable that Rutte is no frontrunner in the debate on a political union.

Yet, his pragmatic stance turned into a problem after David Cameron held his much-discussed 2013 speech in which he set out his vision on the place of Britain in the European Union. Rutte’s opponents accused him of having two faces: a more critical one in public and a cooperative one at the negotiating table in Brussels. The politics of small changes, bit by bit, of muddling through, was criticized by both euro sceptics and europhiles. The euro sceptic party PVV, the Freedom Party, accused the cabinet of covert support of an ‘ever closer Union’, whereas the europhile liberal democrats of D66 accused the cabinet of the lack of a well-thought-out strategy.¹⁵

The answer of the Rutte-administration came from his Minister of Foreign Affairs, the experienced diplomat Frans Timmermans, who in his Note on the Status of Europe expressed his concern about the continuing debates on the *finalité politique* of European cooperation, which could paralyse the decision-making process of more urgent matters to be solved.¹⁶ We have seen now that this argument is in line with Merkel and even Schäuble’s thesis. The new Note of the Dutch Ministry of Foreign Affairs pleads for an active EU policy in various forms of cooperation, depending on the issue to be solved. After the 2005 no-vote for the referendum on the Treaty establishing a Constitution for Europe, Dutch politicians are not eager to discuss neither future visions nor a new European treaty, since this would immediately lead to heated debates on ratification procedures. The German position is quite opposed to the Dutch. The Karlsruhe Constitutional Court has warned the German government that, after the Treaty of Lisbon, there is not much room left for reform. While Dutch politicians see enough room left to manoeuvre on the basis of the Treaty of Lisbon, their German colleagues traditionally stress their limited options, and the necessity to draft a new treaty within a few years.

When one compares the debates on EU policy in the Dutch *Tweede Kamer* (House of Representatives) and the German *Bundestag*, one sees striking differences. Compared to the vivid debates in the *Bundestag* right before every EU summit, the debates in the *Tweede Kamer* are poorly attended. For Dutch parliamentarians, the EU seems to be only a hot topic when the Euro is at stake. EU policy is still treated as one of the subdomains of Foreign

¹⁴ Hanco Jürgens, ‘Hoe de Griekse schulden crisis de liberalen parten speelt’, Montesquieu Instituut, 21-10 2011, <http://www.montesquieu-instituut.nl/9353000/1/j9vvhfxcd6p0lcl/vitree6xf5sg?ctx=vhxgpc5fb7yk>, viewed at 15 March, 2013.

¹⁵ Alexander Pechtold en Sophie in ’t Veld, ‘We moeten vooruit, Europa moet democratischer en effectiever’, *Trouw*, 9-3 2013.

¹⁶ Frans Timmermans, Staat van de Europese Unie, “Bruggen slaan in Europa” (Den Haag 2013).

Affairs. Illustrative for this attitude is the 2013 debate on the General Note on the Status of the European Union. However, also Dutch members of the European Parliament are allowed to attend this debate, the Plenary Hall with room for 150 MPs looked rather empty. Most political parties just delegated one Member of Parliament and one Member of the European Parliament. Of all party leaders, only Alexander Pechtold of the liberal democrats and Marianne Thieme of the Party for the Animals were present.¹⁷ The contrast with the lively debates in the Berlin *Bundestag* could not be bigger.

One might ask whether this debating culture, or the lack thereof, is a problem, since the Dutch are known for their efficient lobby in Brussels. The political lines between The Hague and Brussels are short. Yet, I argue that a vivid debate about the future of the European Union in the Netherlands is necessary for two reasons. First, Dutch politicians should inform their voters as good as possible about their position regarding the EU. Following the media, the Dutch public sphere seems to be divided between Eurosceptics and adherents of a European ‘super state’. Renowned journalists expect that a referendum on the transfer of sovereignty will automatically lead to a new no-vote of the Dutch people.¹⁸ To face this atmosphere of despair, politicians should actively show the various choices to make. Dutch citizens must know that their vote can make a difference, also regarding the EU.

The second argument for a more lively debate on the Dutch EU policy is that the Dutch certainly have influenced the EU finance policy, thanks to a strong economy and influential institutions such as the Dutch Central Bank. But they have definitely been less effective regarding debates on the future EU democracy. At crucial moments in the recent history of the EU, the Netherlands fully failed to implement a strategy at the negotiating table. In 1991, the Dutch Presidency had to withdraw its proposal for a political union. The misjudgement of the Dutch that led to Black Monday had several causes.¹⁹ In the first place, they misjudged their own position. As ‘the biggest of the small countries’ the Dutch vainly expected to have more influence in Brussels. In line with this, the Dutch Presidency did not communicate enough with other member states about their positions on the issue. Instead of building on the earlier draft of the Luxemburg Presidency, it wrote a new draft aiming to

¹⁷ Het debat over de Staat van de Unie, <http://debatgemist.tweedekamer.nl/debatten/het-debat-over-de-staat-van-de-europese-unie-0>, viewed at 15 March 2013

¹⁸ For example Martin Sommer, ‘Het zit niet snor met de Europese identiteit en Timmermans weet het’, *de Volkskrant*, 24-2 2013.

¹⁹ Bob van den Bos, *Mirakel en Debacle, De Nederlandse besluitvorming over de Politieke Unie in het Verdrag van Maastricht* (Assen 2008), 158, 355-375, Anjo G. Harryvan, *In Pursuit of Influence, The Netherland's European Policy During the Formative Years of the European Union, 1952-1973* (Brussel 2009), 31, Sven Pastoors, *Anpassung um jeden Preis? Die europapolitischen Strategien der Niederlande in den Neunziger Jahren* (Münster 2005), 93-113.

realize its own objectives. Lastly, the cooperation of the most important players - Dankert, Van den Broek and Lubbers - was certainly not ideal. The successive misjudgements could have been prevented by a broader public debate about the goals of Dutch EU policy including the question whether these goals are feasible. The lack of such a debate, based on realistic assessments, led to a poor judgement of the chances of success. After Black Monday, these questions were discussed thoroughly, but still too limited by foreign affairs specialists and civil servants of the Ministry of Foreign Affairs, which coordinated, and still coordinates, Dutch EU policy. As I will argue, during the European Convention in 2002-2003, Dutch EU policy failed again.

Debating the European democracy: the Convention for the future of Europe

One of the problems the EU had to solve after the Treaty of Maastricht was: How to make the EU more efficient, decisive and democratic? These questions would become urgent with the enlargement of the EU from twelve member states in 1989 to twenty-five in 2004. A number of institutional issues had to be resolved, such as the size and composition of the European Commission, the weighting of votes in the European Council, the extension of qualified majority voting and the distribution of seats in the European Parliament. Solving these issues appeared not to be an easy job for the heads of the member states. After the 1997 Treaty of Amsterdam, the still unsolved questions became known as the 'Amsterdam leftovers'. Also, the 2000 Treaty of Nice did not bring a satisfactory solution. In declaration number 23, annexed to the Treaty of Nice, the Member States called for a debate on the future of the Union, focusing on the delimitation of powers, the status of the Charter of Fundamental Rights, the simplification of the Treaties and the role of the national parliaments. To discuss these 'Nice leftovers', the heads of state drafted a declaration in Laeken (2001), in which they urged to establish a Convention, which questions of democracy, transparency and efficiency were discussed, as well as the adoption of a constitutional text for the EU.

One of the firm proponents of this Convention was Joschka Fischer, the German Minister of Foreign Affairs. In his Humboldt Lecture of May 2000, he had already proposed to think about a final constitution for the EU, with a parliamentary government, two Houses, and a chosen president. Fischer took distance of the idea of post-nationalism, of an EU beyond the nation state. Instead, he emphasised a strong position of the nation states within the Union. And if member states did not want to join further integration, an avant-garde

within the Union should be created. Fischer proposed a multi-speed Europe; those states questioning further integration would follow later.²⁰ Fischer's lecture brought about a lively debate in France, where his 'German model' of the EU was not immediately welcomed. The French minister of Foreign Affairs, Hubert Védrine, saw a discrepancy between the position of a democratically chosen president and the heads of state. Which issues would be left to the French President and Prime Minister, or the German Chancellor? And the French Minister of Interior, Jean-Pierre Chevènement, said that the Germans still dream of a Holy Roman Empire of the German Nation.²¹

The Dutch reactions were reserved. Prime Minister Wim Kok critically commented on the quest for prospects of the EU in general. Minister for European Affairs Dick Benschop noticed that we already have a federal Europe and that it is absurd to speak of the finality of the EU. For other member states, it was not clear anymore what the Dutch position was.²² Traditionally, the Netherlands favoured a strong position of the European Parliament and the European Commission, but after Black Monday these goals were adjusted. Prime Minister Kok was not against a strong European Council. But the 'Purple Government', consisting of liberals and of social and liberal democrats, was divided on this issue (as the current Dutch government is).

In 2001, when the Convention for the Future of Europe was established, the Dutch ministry of Foreign Affairs was not well prepared. Despite its official character, the Minister of Foreign Affairs Jozias van Aartsen called the Convention a permissive talk club ("vrijblijvende praatclub"). Despite a serious opportunity, the Dutch Ministry of Foreign Affairs made no effort to nominate a fellow-countryman for the Praesidium of the Convention.²³ Besides the Praesidium and the representatives of the governments of the members states, the Convent comprised the representatives of the Houses of Parliament of the member states, as well as representatives of the European Parliament and the European Commission; 102 members in total.

The effectiveness of the Convention was underestimated by many, certainly also by the Dutch. The delegate of the Dutch government in the Convention, Hans van Mierlo, liberal

²⁰ Fischer, Joschka, Vom Staatenverbund zur Föderation – Gedanken über die Finalität der europäischen Integration, *Humboldt-Rede zu Europa*, 12. May 2000, *Themenportal Europäische Geschichte*, <http://www.europa.clio-online.de/2006/Article=17>, viewed at 15 March 2013.

²¹ Heinrich August Winkler, Integration oder Erosion. Joschka Fischers 'Humboldt-Rede' Absicht und Wirkung, <http://www.europa.clio-online.de/2008/Article=155>, viewed at 15 March 2013.

²² Ben van der Velzen, 'Duitsland begrijpt Nederland niet meer', *NRC Handelsblad*, 14 May 2001, Mark Kranenburg, 'De stilte over Europa', *NRC Handelsblad*, 22 June 2000.

²³ Frans Timmermans, 'De ins en outs van de Europese Conventie', *Socialisme & Democratie* 7/8 (2003), 8-19, there 12-13.

democrat and former Dutch Minister of Foreign Affairs, used his mandate to expose his personal views on the EU democracy. Particularly after the elections of May 2002, he did not consider it his task to express just the views of the Dutch government. According to the Dutch delegate the *Tweede Kamer* in the Convention, the already mentioned Frans Timmermans, this led to many questions of the partners about the position of the Dutch government. If Van Mierlo could not clarify this position, who else would do that?²⁴ A coordinated strategy from The Hague only developed after Jaap de Hoop Scheffer was appointed as Minister of Foreign Affairs in July 2002. He realised that the Convention was not a chat group but an ambitious gathering of European politicians, who were more effective than the heads of government in drafting democratic reforms of the EU. In September 2002, Hans van Mierlo resigned as a representative of the Dutch government, since he disagreed with the views of the new cabinet. His ideas about a supranational EU did not correspond to the political climate after the murder of Pim Fortuyn. Also, Van Mierlo's political party D66 was not part of the coalition anymore.²⁵ A few weeks later, the liberal Gijs de Vries was appointed as his successor. De Vries was a competent delegate, but compared to the delegates of other member states, he did not carry a considerable political weight. Countries like Great Britain, France and later also Germany sent their Minister of Foreign Affairs as representative to the Convention. Their position was clear-cut. De Vries told the Dutch media that he would follow the line of the Dutch government in the Convention, but saw it as his first task to listen and to read. Yet, the confusion remained when De Vries brought in new amendments which were in direct conflict with the 2001 Benelux Memorandum, in which the strengthening and extension of the Community Method was proposed.²⁶ In his evaluation of the Convention, Timmermans praises De Vries for his input to find a compromise about the issue of the size of the European Commission. However, since the Dutch House of Representatives declined this compromise, De Vries could in the end not vote for his own initiative.²⁷

The immense political problems in The Hague after the murder of Pim Fortuyn might explain the Dutch not very coherent representation in the Convention. Yet, the aftermath of the Convention appeared not to be fortunate for the Dutch. The 'final document' became the

²⁴ Frans Timmermans, 'De *ins en outs* van de Europese Conventie', *S&D* 7/8 (2003), 14

²⁵ Jacques Pelkmans, Monika Sie Dhian Ho, Bas Limonard en Antoñita Vazquez Muñoz, 'De Nederlandse stem in de Europese Conventie; een impuls voor het debat over het eindspel', in: Pelkmans, Sie en Limonard, *Nederland en de Europese Grondwet* (Amsterdam 2003).

²⁶ Frans Timmermans, 'De *ins en outs*', 14 ; see also Memorandum on the Future of Europe by the governments of Belgium, the Netherlands and Luxemburg, 22 June 2001, <http://ig.cs.tu-berlin.de/oldstatic/w2001/eu1/dokumente/Politikerreden-polDokumente/BeNeLuxMemorandum2001-Belgien.pdf>, viewed at 15 march 2013.

²⁷ Frans Timmermans, 'De *ins en outs*', 16.

draft for the Treaty establishing a Constitution for Europe, signed on 29 October 2004, ratified by 18 member states, but rejected by French and Dutch no-voters in referenda in May and June 2005. If the Dutch Minister of Foreign Affairs would had been personally involved in the Convention, possibly the Dutch cabinet would have been able to commit the Dutch voter as well. Now, many Dutch were unpleasantly surprised about such a detailed and extensive European constitution, which is incomparable with the open, relatively permissive Dutch constitution. After the referenda a short pause was used to adjust the Constitutional Treaty into the Treaty of Lisbon, signed on 13 December 2007; it entered into force on 1 December 2009.

For the present-day situation within the EU, the Convention has been an important body. It laid the foundation for the Treaty of Lisbon. As the Dutch government seemed not to be very keen on the outcome of the Convention, one might hope that the Dutch Houses of Parliament were alerted. Since the debate about the future democracy in Europe is not finished, I will discuss the role of the houses of parliament in Germany and the Netherlands in the next section.

Debating the Convention in the Houses of Parliament: a comparison

The debates in the Dutch and German parliaments on the Convention on the Future of Europe together form an excellent case study to show how the parliaments defined their role in the European Union and which concepts they used to formulate their ideas about the future democracy of Europe. These debates could be seen as self-defining moments, in which the chambers mark their position towards each other and towards the European Institutions. The various debating cultures reveal information about the constitutional cultures in which the role of these houses is defined. Which subjects did they consider important and which not? Several concepts are used in the houses in various ways, such as federalism, a ‘catalogue of competences’ and the ‘principle of subsidiarity’. These concepts are used in the EU context but they are known as typically German as well. Their various meanings within the EU are related to the transnational political cultures of the member states. Currently, federalism is not a very popular concept in the Dutch media. However, at the beginning of this century, this criticism was not yet widespread. In the period of the Convention, options for a future democracy of the EU were still left open, argued, discussed, affirmed and rejected. The

Houses of Parliament played an important role in the decision-making process, since they all delegated a representative and an alternate to the Convention.

Tweede Kamer

The debates in the Dutch ‘Lower House’ are varied and often vivid since the MPs ask many questions, which have to be answered by the Cabinet. Also, the MPs discuss many issues amongst each other. These discussions are usually strictly moderated; intervening comments without permission of the chair are not allowed. The debates about the Convention focused on those elements which had attracted public attention, such as the preamble and the charter of basic rights. A majority, including the Christian Democrats, agreed with the reference in the preamble to the cultural, religious and humanist inheritance of Europe, rather than a reference to God or the Jewish Christian tradition. A majority also endorsed the inclusion of fundamental rights. Yet, the *Tweede Kamer* was not only divided about the Constitutional Treaty, but also about the referendum on the treaty, which was a new phenomenon in Dutch politics. Also, the debates were coloured by the divide between adherents and adversaries. Adversaries such as the Socialist Party repeatedly warned against a European ‘super state’. Particularly Mat Herben of the LPF, the party of the murdered Pim Fortuyn, was crushing in his judgement of the EU, which he considered a bigger threat than the sea level to the polders or international terrorism. He called the constitution a genetic failure, bulimia nervosa, an obsession to become more large and thick.²⁸ Adherents of the constitution such as the liberal democrat Lousewies van der Laan exclaimed that the opponents only discussed things which had nothing to do with the content of the European constitution.²⁹ But also the liberal democrats themselves did not discuss the constitution at length. As a pro-European party, the constitution itself seemed to be of less importance than for example a Common Foreign and Security Policy based on international law.³⁰ For them, the referendum on the Constitutional Treaty was by far more important. They had finally discovered a possibility to implement one of their basic principles of democracy.

In the Dutch debates, concepts of federalism played an important role. Often, the German federation served as a blueprint. Particularly the Christian Democrats referred to the German model, for example to solve cross-border problems. Also, they wanted to secure a

²⁸ *Handelingen van de Tweede Kamer der Staten Generaal (HTK)*, 23-6, 2004.

²⁹ *HTK*, 24-05, 2005

³⁰ *HTK*, 3-9, 2002

catalogue of competences, as their German counterparts had suggested. Particularly the liberal VVD declined these ideas. MP Hans van Baalen warned against the position of the Netherlands within a federal EU, which could at best be comparable with Bavaria.³¹ Hans Dijkstal, parliamentary leader of the VVD, warned against the rigidity of a catalogue of competences. In determining the responsibilities within Europe, one needs flexibility.³² The VVD Minister for European Affairs, Atzo Nicolai, told the *Tweede Kamer* that the EU is already known for its boundless competences and for its mania for rules and regulations which curtail the lives of common people.³³ Remarkably, only the SP was an adherent of the catalogue of competences, not to improve decision making process of the EU but to decrease its influence.

Also, the social democrat MP Frans Timmermans, delegate at the Convention, seemed not to be in favour of German federalism as a model for the EU. In his evaluation of the Convention, he praised the very effective input of the British Minister for European Affairs Peter Hain, the former British ambassador in Brussels Sir John Kerr, secretary general of the Convention, and of the witty British Member of the European Parliament Andrew Duff, but seemed less impressed by the not so effective Teutonic power play of Duff's German colleague Elmar Brok.³⁴ In the *Tweede Kamer*, Timmermans warned against a growing importance of national interests in the EU. To illustrate this, he referred to the German *Bundesrat* where the representatives of the *Länder* at any length defend their own individual interests, since it is neither their task to think about the structure of their country, nor about the cooperation in the future.³⁵ In the end, he was satisfied with the result of the Convention, since the rights of European citizens were secured and the influence of both the European and national parliaments extended. According to Timmermans, the use of the word constitution easily leads to misunderstandings; it is better to call it a treaty in which basic rights are settled.³⁶

A fundamental debate on the content of the constitution did not take place in the *Tweede Kamer*. The debates in the Dutch House of Representatives were overshadowed by two other issues: the referendum and the EU as a 'super state'. An explanation for this could

³¹ *HTK*, 18-12, 2003

³² *HTK*, 17-10, 2001

³³ *HTK*, 3-9 2002

³⁴ Frans Timmermans, 'De ins en outs', 11, 13.

³⁵ *HTK*, 19-12, 2001.

³⁶ *HTK*, 31-3 2004.

be that the Constitutional Treaty was with all its detail unfamiliar to Dutch constitutional tradition.³⁷

Bundestag

In the German ‘Lower House’, MPs regularly hold longer speeches without being interrupted. Compared to the *Tweede Kamer*, the German MPs discuss much less in public with each other, nor with the cabinet. On the other hand, one hears many comments, laughs and critical remarks in between the speeches. Other than in the Netherlands, these remarks are all recorded in the minutes of the *Bundestag*, including the name of the parties which approve or applaud. The MPs of the *Bundestag* were much less divided on the outcome of the convention. Only one minority party, the PDS, voted against it. The most heard argument in favour of the Constitutional Treaty was the increased capability of the EU to act (*Handlungsfähigkeit*) and its contribution to peace and security.³⁸ Traditionally, in Germany Europe has been considered a peace project. As one could read in the election programmes of political parties, the unification, peace, security and the EU are strongly interrelated topics in Germany.³⁹

In the *Bundestag*, Chancellor Gerhard Schroeder defended the constitution as a good outline for a wider, integrated Union. The inclusion of the basic laws was of importance for identification of European citizens with the EU.⁴⁰ Both the German social democrats and the Greens stressed the importance of the EU as a community of shared values. For Christian Democrats these shared values were in close connection with the basic laws and the reference to God in the preamble of the draft constitution. However, after it became clear that this *Gottesbezug* could lead to an exclusion of Turkey, the Christian Democrats advocated a reference to the Jewish Christian tradition.⁴¹ As in the Netherlands, the German Christian Democrats were in favour of a catalogue of competences, which should make clear who is responsible for what. Judicial review of subsidiarity could strengthen this demarcation of responsibilities. Particularly the Christian Democrat CDU/CSU and the liberal FDP were in favour of extended judicial review in the EU. The FDP-liberals wanted to secure the basic

³⁷ Hanco Jürgens, *Deviating paths, converging policies; Dutch and German Constitutions within an ever-changing European Union*, Montesquieu Paper Reeks 5 (The Hague 2012).

³⁸ *Deutscher Bundestag, Plenarprotokoll, Stenografischer Bericht (BT), 22-2, 2002.*

³⁹ Koen van Zon, *De Europeanisering van Nederlandse en Duitse verkiezingsprogramma's sinds 1980*, unpublished internship report (Amsterdam 2011),

⁴⁰ *BT*, 12-5, 2005.

⁴¹ *BT*, 13-5, 2003.

rights through judicial review by the European Court of Justice. Also, they wanted to safeguard the free market and the stability of prices within the constitution. And they proposed a referendum, because of the historic character of the Constitutional Treaty.⁴² Since only the opposing PDS supported this idea, it was no big issue in the debates.

Because of the lack of strong divisions in the *Bundestag*, the debates on the Constitutional Treaty were more concentrated on the draft constitution itself. The Constitutional Treaty was familiar to the German basic law in various ways, in its effectuation and detail, and in the inclusion of basic laws. For this reason, it is obvious that the debates in Berlin were more to the point.

Bundesrat

The familiarity of the Draft Constitutional Treaty for German politicians also played an important role in the *Bundesrat*. In their statements, the prime ministers and mayors of the *Länder* do usually not discuss issues amongst each other, but proclaim their views.⁴³ The *Länder* have always been a strong force within the Federal Republic of Germany. Also, to an increasing extent, they had formed an active pressure group in Europe, where they defended their rights very well. They have been in competition with the Federal cabinet about their competences for a long period, particularly relating to the EU. Also, they had serious problems with the EU policy to disentangle state - business relations. As owners of the *Länder* banks and of large energy firms, they were ordered by the EU to distance themselves from these firms.

Regarding the Convention, all representatives underlined the importance of competences for the EU to demarcate the responsibilities of the regions, of the member states and of the EU. In the *Bundestag*, Stanislaw Tillich of Saxony referred to the BSE crisis, when the federal government negotiated in Brussels on issues which had to be organised and paid by the States.⁴⁴ The *Länder* were not amused. They demanded a role for the regions within the EU. Erik Bettermann of Bremen warned against uniformity which could lead to rejection and turn into nationalism.⁴⁵ Also, the *Bundesrat* suggested that the European Council should

⁴² *BT*, 28-5, 2004.

⁴³ Of the sixteen *Länder*, there are three city-states: Berlin has a mayor, who may call himself minister president as well, Hamburg has a mayor, and Bremen has a mayor who is officially president of the senate, all other states have a prime minister.

⁴⁴ *BR*, 9-3, 2001.

⁴⁵ *Deutscher Bundesrat, Plenarprotokoll, Stenografischer Bericht (BR)*, 13-7, 2001.

develop itself into a House of the Member States, which meets in public, and decides with a majority vote.⁴⁶ Here, the model of the *Bundesrat* is projected to the EU level.

Eerste Kamer

The contrast with the Dutch ‘Upper House’, the *Eerste Kamer*, could not be bigger. This chamber sees itself as a *chambre de reflection*. Indeed, the debates had a rather open, noncommittal character. The questions CDA senator Jos van Gennip asked in the House illustrate this very well: “What is Europe actually, where does it stop, where does it go to? Aren’t these the questions we should submit to the citizens of Europe?”⁴⁷ Social democratic senator Erik Jurgens complained in 2003 that the discussion about the Constitutional Treaty in the *Eerste Kamer* had come too late since the work was already done. According to Jurgens, the procedures of the *Eerste Kamer* should better anticipate on the European decision making process. Now, the Chamber discusses issues only after they are submitted for approval by the Dutch government. According to Jurgens, the States-General could have influenced the Convention earlier by executing specific instructions to the Dutch delegates in the Convention.⁴⁸ To his regret, the delegates were not mandated at all.

Jurgens called for a better coordination. Possibly his remarks were also directed towards the delegate of the *Eerste Kamer* in the Convention, René van der Linden, who was a very active member of the Convention. One of the amendments Van der Linden submitted was the establishment of a European ‘Chamber of Competences’, which reviews legislation with respect to competences, subsidiarity and proportionality.⁴⁹ However, this initiative was never realised; it was certainly not accepted by the Dutch parliament. Particularly the *Tweede Kamer* criticised the rigidity of a competence catalogue; a Chamber of Competence would have meant the judicial fulfilment of this catalogue. Van der Linden’s views of the future of the EU were closely related to the German perspective.

Interestingly, most senators were in favour of supranational procedures, of the Community Method with a strong position of the European Parliament and the European Commission. Of the bigger parties, only Wim van Eekelen, liberal senator, former Minister of Defence and secretary general of the Western European Union, proposed a reservation. He

⁴⁶ BR, 12-7, 2002.

⁴⁷ *Handelingen van de Eerste Kamer der Staten Generaal (HEK)*, 26-11, 2001.

⁴⁸ HEK, 4-11 2003.

⁴⁹ Elmar Brok, Jacques Santer, René van der Linden, and others, ‘Subsidiarity must be controlled by a judicial body’, Cover note, 24 July 2002, <http://european-convention.eu.int/pdf/reg/en/02/cv00/cv00213.en02.pdf>

confirmed that the Community Method is in the interest of small member states like the Netherlands, and he even confirmed that military questions could be solved with majority voting, but he expresses his doubts about the use of the Community Method for all policy domains, such as social policy.⁵⁰ Also, the senators were generally in favour of qualified majority voting. D66 senator Jacob Kohnstamm said: “Europe stands or falls with majority voting”.⁵¹ And Van der Linden endorsed that European citizens are better off with majority voting than with a situation without a decision having been made. In line with this, the European Council was not a very popular institution in the *Eerste Kamer*. Particularly the idea of a permanent president of the Council met with disapproval. The Green senator Leo Platvoet called this president a Sun King and his colleague Ans Zwerver spoke about an undemocratic *monstrum*.⁵²

The senators worried about the Union’s capability to act. This was a very important issue for the liberal Van Eekelen, since he found the legitimacy of the EU just in its efficiency: “The more effective, the more legitimate.”⁵³ Effectiveness was also his leitmotiv for a Common Foreign and Security Policy, which he endorsed. However, he criticised the double position of the proposed EU minister of Foreign Affairs as schizophrenic.⁵⁴ This minister was supposed to be both a member of the European Commission and of the Council, as schizophrenic. Perhaps he was right, the current High Representative of the Union for Foreign Affairs and Security Policy, Lady Catherine Ashton, is a member of the European Commission who takes part in the Council, but is not a member of it.

Of all senators, only those of the minority parties the Socialist Party (SP) and the Christian Union (CU) criticised supranational decision making. The SP was ‘strongly against’ federalism and the CU spoke about a legitimisation deficit of federalism.⁵⁵ Kars Veling of the CU criticised the idea of Europe as a community of shared values, which he considered nothing but wishful thinking. Since there was no such thing as one European identity could there also not be a community of shared values.⁵⁶

Of all Houses discussed here, the *Eerste Kamer* was most in favour of supranational structures. This is remarkable, since the Dutch cabinet, particularly the Prime Ministers Wim

⁵⁰ HEK, 2-12, 2001, 18-12, 2012.

⁵¹ HEK, 2-12, 2002; 3-12, 2002; 10-6, 2003; 17-6, 2003.

⁵² HEK, 17-6, 2003.

⁵³ HEK, 18-12, 2001.

⁵⁴ HEK, 2-12, 2002.

⁵⁵ HEK, 2-12, 2002, 17-6, 2003.

⁵⁶ HEK, 26-11, 2001

Kok and Jan Peter Balkenende, had accepted the strong position of the European Council. For the senators, it seemed as if Black Monday had never happened.

Concluding remarks

With the Treaty of Lisbon, the debate about the future democracy in Europe has not been finished. The sovereign debt crisis forced politicians to think about democratic legitimization of economic policy again. In his Master Plan for a Genuine Monetary and Economic Union, Herman van Rompuy not only proposed a Banking Union but also a strengthening of the democratic legitimacy and accountability within the EU. However, the debate about democracy reform has been postponed due to differences of opinion between France and Germany; the item will definitely return on the EU agenda. When this happens, the Dutch government and the Houses of Parliament should definitely be better prepared than they were during the negotiations for the Treaty of Maastricht and for the European Convention, which laid the basis for the Treaty establishing a Constitution for Europe and the Treaty of Lisbon.

The Dutch EU policy has two faces. While the Dutch financial EU policy has been strategic and influential, the Dutch policy for democracy within the EU has been rather confused. When financial and economic issues are at stake, the Dutch government takes advantage of a strong economy and of ditto institutions, above all the Dutch Central Bank, which is strongly linked with comparable institutions in and outside the EU. However, when democratic issues are at stake, there are hardly any institutions behind the *Tweede* and *Eerste Kamer* which underpin the position of the Parliament against a growing influence of the EU as legislative body. A comparison with the German debates on the future of the EU brings me to three conclusions.

Firstly, in Germany, the prospects of a future Europe are discussed often, extensively and comprehensively, not only by political leaders at public events but also in the Houses of Parliament. The German example shows very well that an open discussion on the future of the EU democracy could reveal policy goals, both at home and in the EU. The EU has become a political arena in which decisions often are the result of small margins caused by long negotiations, determined by economic limitations, institutional interests and EU law. In Brussels, pragmatic choices are to be preferred over philosophical exposés on the prospects of the EU democracy. However, for a relative small country like the Netherlands, it is necessary

to actively formulate EU policy goals, not only to communicate this view with the partners in Europe, but also to convince the people at home of the necessity of a coherent, consistent and active EU policy.

Secondly, thanks to the constitutional power and institutional support of the Karlsruhe Constitutional Court, the German Houses of Parliament defend their European agenda more effectively than the Dutch do. Traditionally, the *Bundesrat* is a very strong institution, existing of the sixteen *Länder*, which not only exercise their influence via the Federal Council, but also via other political and diplomatic channels. The states are not only defending their own interests, but in their own way they have been an important force in the European integration process as well. The increasing involvement of the *Bundestag* with the German EU policy is of recent date. After the Lisbon Treaty, the Karlsruhe Constitutional Court judged that the influence of the *Bundestag* has been threatened by further Europeanisation. According to this Court, the legislative power of the *Bundestag* must be guaranteed as long as the European Parliament does not exercise full legislative power within the EU and the European people are not equally represented in this Parliament. Therefore, the *Bundestag* must be able to judge any transfer of sovereignty from the Federal Republic of Germany towards the EU. Analogous to the German democratic procedures, it would be advisable to rethink the Dutch democratic procedures regarding the EU. The democracy deficit, often discussed in the Netherlands, starts at home.

Thirdly, many debates about the EU are often a mirror of national political cultures. Concepts like federalism, a catalogue of competences and subsidiarity have different meanings in the various member states. Dutch citizens should realise that concepts of EU federalism are not based on a German template, and that a 'political union' is not the same as a European super state. A European debate about the interpretation of political concepts could help to clarify the many misunderstandings as well as the wide variety of choices to be made.

In een vrije staat dient iedereen die in het bezit kan worden geacht van een vrije wil, zichzelf te besturen. De wetgevende macht zou dan ook bij het volk in zijn geheel moeten berusten. Maar aangezien zo iets in de grote staten een onmogelijkheid is en ook in kleine staten op veel bezwaren stuit, dient het volk vertegenwoordigers aan te stellen die alles moeten doen wat het volk zelf niet kan.

Montesquieu, *Over de geest van de wetten* (1748)



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