

Europe Should Establish Itself As a Republic Of the Republics—Not As a Super-State

On behalf of Member of Parliament Dr. Peter Gauweiler,¹ Prof. Karl Albrecht Schachtschneider has filed suit against the Constitutional Treaty.² He is Professor of Public Law at Erlangen-Nürnberg University, and is a well-known specialist in European law and the European Union's (EU's) proposed Constitutional Treaty. In 1992, it was he who petitioned the Federal Constitutional Court of Germany,³ in an attempt to prevent Germany from ratifying the Maastricht Treaty. In 1998, alongside Professors Wilhelm Hankel, Wilhelm Nölling, and Joachim Starbatty, he again entered a petition in the Federal Constitutional Court to prevent Germany from adopting the euro. This interview was conducted at Nuremberg on May 3 by Gabriele Liebig and Alexander Hartmann, and was translated by Katharine Kanter. All footnotes have been supplied by EIR.

EIR: Professor Schachtschneider, you have just entered a petition before the Federal Constitutional Court, in an attempt to prevent Germany from ratifying the Constitutional Treaty.⁴ What are the critical constitutional issues involved?

Schachtschneider: My essential motive in all of this, is that I must stand up for the *law*, when it comes to European integration. I accept the principle of integration as that appears in the German Constitution, but the law must not get lost in the process. This political point of view is one to which the Federal Constitutional Court has lent an ear in the past, as we saw during the debate over the Maastricht Treaty.

There is no such thing as freedom without law, but neither is there law without a state. The law, and conse-

quently freedom, and, most especially, the rights of man, are now gravely jeopardized, on account of this flight forward to European integration—indeed, many rights have already vanished. I intend to save what can yet be saved. I view that as a duty. There must be someone in Germany to force through a debate on the issue, and the Federal Constitutional Court happens to be the sole institution in a position to do so. There is no one else prepared to seriously debate the European Constitutional Treaty—with the happy exception of yourselves. But the mass media will not touch it, nor will the two chambers of Parliament, despite Dr. Peter Gauweiler's efforts.

During the Maastricht debate in 1992, I did succeed, despite all obstacles, in launching a serious debate. Of course, debating it will not suffice; the treaty needs to be changed, because it is wrong, and it will unleash enormous harm.

Among the principles that I stand for, freedom in the broadest sense, there is to be found property, as well as the principles that underpin freedom: democracy, the constitutional state (*Rechtsstaat*), a state that promotes the common good (*Sozialstaat*), and federalism. Those principles, laid down by Article 20 of the German Constitution, have tended to recede into the background, as the process of European integration marches on. The new Constitutional Treaty is a milestone in the emergence of what I call the *Unrechtsstaat*, the unjust or unconstitutional state.

Nor is this Treaty meant to be the final word! There will be further developments, included potentialities, that are frightening, such as the return of the death penalty. Not in all instances, but in case of war, or where the danger of war is imminent. Furthermore, it will be lawful to kill, should that be deemed needful to repress riot and insurrection. In other words, under the EU Charter of Human Rights, it would have been deemed legitimate to fire on the crowd at Leipzig in 1989!

EIR: That's scarcely to be believed!

Schachtschneider: I shall get back to this, in discussing fundamental rights. But when a German MP says *yes* to the Treaty, he hasn't the slightest notion of what he's actually doing! He is not properly acquainted with the Treaty.

1. Dr. Peter Gauweiler is a lawyer and holds a Ph.D. in law. He is a former German Secretary of State for the Interior (1986-90), and former Minister of Development (1990-94). He is now a Member of Parliament in the Christian Social Union party from Munich.

2. In English, the document discussed in this interview is known, officially, as the Treaty establishing a Constitution for Europe. See <http://europa.eu.int/constitution/en>. We shall refer to it here as the Constitutional Treaty.

3. The Federal Constitutional Court, Bundesverfassungsgericht, is the Supreme Court of Germany. Its role is that of guardian of the Constitution.

4. As we go to press, the President of Germany, Horst Köhler, has announced that he will not ratify the Treaty until the Federal Constitutional Court has handed down its judgment. On May 27, the Bundesrat (Upper Chamber) approved the Treaty.



EIRNS/Gabriele Liebig

Professor Schachtschneider, holding a copy of the European Constitutional Treaty. He said that he views it as a personal duty to “save what can yet be saved” of the rights of man, which “are now gravely jeopardized, on account of this flight forward to European integration.”

For example, Clause IV-445⁵ of the Constitutional Treaty simplifies the procedure for amending that same Treaty, and thus, for amending what purports to be a Constitution governing 500 million people. It covers a vast array of

5. Article IV-445 of Part IV (General and Final Provisions) reads as follows (excerpted from the official translation):

“Simplified revision procedure concerning internal Union policies and action—

“The Government of any Member State, the European Parliament, or the Commission may submit to the European Council proposals for revising all or part of the provisions of Title III of Part III on the internal policies and action of the Union. The European Council may adopt a European decision amending all or part of the provisions of Title III of Part III. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area.

“Such a European decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements. The European decision referred to in paragraph 2 shall not increase the competences conferred on the Union in this Treaty.”

endeavor, from the economy and the internal market, currency union, competition law, right down to consumer protection, Social Security policies, and domestic security policies, and the so-called Chapter entitled “Area of Freedom, Security and Justice.” The regulations at Title III, Part III, can all be altered by decision of the heads of state and government, that is, by a European decision. Neither the European Parliament nor the national Parliaments are to be involved in any way.

What this all adds up to, is that this particular piece of paper is not designed to last for any great length of time, but it does empower the governments to make changes in future, and thus amounts to an *Ermächtigungsgesetz* (a law of empowerment). It’s been done in quite a sophisticated way, and so has taken me some effort to unravel it. The ordinary politician cannot be expected to know how to read this Treaty. For example, a European decision to amend the Constitution “will come into force only once the Member States have agreed, and in accordance with their own constitutional provisions.” That sounds marvellous, but in Germany, only the German government need agree. The German Parliament, that is, Bundestag and Bundesrat, has the right of consent only where treaties under international law are concerned.

The Constitutional Treaty happens to be an international law treaty. Although it had to be voted into being by both Houses with a two-thirds majority, further amendment may be made by European decision. But such a European decision *does not* qualify as an international law Treaty! And since it is *not* a Treaty, in principle, as with the entire NATO jurisdiction, one will only need approval from the Foreign Minister. Foreign Policy is, in principle, the domain of the Federal government.

What this means is that European decisions are to be taken without the democratic political process. No referendum will be held on such issues, neither in France, nor in Great Britain, nor anywhere for that matter. The German Parliament will not be involved. Alongside the President of the European Council and Commission, the heads of state and government will keep it all in the family, and decide among themselves. They will be able to alter the Treaty or important parts of the Treaty. And I am led to believe that they will do so, far sooner than one would imagine.

EIR: Provided the constitutional order be respected, there is nothing wrong with agreements between governments. But does the title “Constitution” itself not suggest that the German Constitution will take a back seat—all the more so, since the rule is that European law shall prevail over domestic law?

Schachtschneider: Indeed. The entire body of European law, including secondary and third-level law, in other words, every minute directive, will override the Constitutions of the member states. The Federal Constitutional Court will not just wave that one through, just as it cut back the Maastricht Treaty

in favor of the national Parliament.

I am very much in favor of holding referenda. In such a party-political state, we will find our way back to democratic structures, only by holding referenda. The right to do so has long been established.

EIR: The Constitutional Treaty is a voluminous tome, that one cannot simply thumb through and understand. How can one hold such a referendum, when you say that even our MPs haven't got it?

Schachtschneider: I am aware of that objection, and it is justified. The MPs do not know what the Treaty contains. It's a great pity, because they would, if they'd only hear me out for two or three hours. But they've chosen not to! They've roped in integrationists, who are purblind to the problems, let alone prepared to deal with them! I know the ins and outs of the Bundestag Commission on Europe. These people are not stupid, but they most certainly are ill-informed. Wrongly informed, actually. For example, with respect to the Federal Constitutional Court's decision in the matter of Dr. Peter Gauweiler's petition. Although the Court dismissed it at the time, it did nevertheless virtually invite us to return on May 27.

EIR: The Court declined to hear your petition against the Treaty, until both Houses of Parliament had voted.

Schachtschneider: Precisely. In filing the petition, we had hoped to prevent the Treaty getting a second and third reading in Parliament. The Federal Constitutional Court declined to entertain that part of our petition, the which, I can understand. The Court referred back to its Maastricht decision, one I'm well acquainted with, as though to say: "Professor Schachtschneider, you *must* know that, since you were yourself Counsel for that Petition." So, I see it as a very broad hint: "Turn up on May 27, and we shall stall the Treaty ratification process until we've come to a decision. And that can take a full year."

EIR: When the Maastricht decision was handed down by the Federal Constitutional Court, what did you actually achieve?

Schachtschneider: For the Federal Constitutional Court to have acknowledged an erstwhile-neglected fundamental right, namely, the citizen's right to be substantially represented by the Parliament, was, if I may say so, fairly sensational. The people's representatives must, however, have something to represent, they must have prerogatives worthy of the name. "Substantial prerogatives" was the term the Court used. In my petition to the Federal Constitutional Court, I had argued that through the Maastricht Treaty, Germany's statehood would be so voided of content that Article 38 of the Constitution,⁶ a fundamental right, whereby MPs are to

6. Article 38 of the German Constitution of 1949: "The deputies to the German Bundestag are elected in universal, direct, free, equal and secret elec-

represent the entire people, would become, to all intents and purposes, otiose. And the Federal Constitutional Court held that this had "not yet" become the case. In its 1993 judgment, it twice used that term, "not yet."

With the present Constitutional Treaty, the red line has been crossed. That is the hard core of our plea to the Federal Constitutional Court. Our opponents contend that the existence of such a fundamental right cannot even be conceived of. But the Federal Constitutional Court has found in our favor. And I am quite convinced that the Court will not back-track on that decision.

I have rather rested my case against the Constitutional Treaty on the issue of political freedom, because the aforesaid Article 38 of the German Constitution, that is, the right of the entire people to be represented, is but one aspect of political freedom. In Germany, political freedom as a fundamental right has never yet been acknowledged, a fact unknown to the general public. The Bavarian Constitutional Court has even gone so far as to deny, explicitly, that there exists a right to political freedom. Yes, we do enjoy the right to vote, and a very limited right to free speech. But political freedom, the right to take part in formulating the law, to take part in the political life of the state, the *polis*, as the Greeks said, that is, the kernel of my teaching—this has never yet been acknowledged by any German court as a fundamental, and general, right.

Hence my reference to Article 38 of the German Constitution, because this claim is secure. The issue is "existential statehood" and the principle of "limited conferral."⁷ Others call it sovereignty, but that is a monarchical notion that sits ill with a republican Constitution. "Existential statehood" refers to the essential duties and prerogatives of the state, those directly related to the state. The state is none other than the People, who have organized themselves into a state, the citizenry, that is given a structure under constitutional law. The crucial sentence in the *Grundgesetz* [the German Basic Law, or Constitution], that no one may do away with, reads, "The power of the state rests entirely with the People." On that basis, the European Union enjoys prerogatives within the framework of "limited conferral" alone. The principle of limited conferral on a case-by-case basis, is the fundamental notion underlying our petition to the Constitutional Court. I

tions. They are representatives of the whole people, are not bound by orders and instructions and are subject only to their conscience" (translation into English as revised in 1991, by the Federal Ministers of the Interior, Justice, and Finance).

7. "Limited conferral" as the notion appears in Article I-11 of the European Constitutional Treaty: "The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States."



EIRNS/Chris Lewis

Globalization has taken a heavy toll on Germany, and under the Constitutional Treaty, it will get worse. "Shareholders make hay even in a hailstorm! In fact, an economic breakdown would create the ideal circumstances for privateers to operate." Left: A bankrupt company in Frankfurt. Right: The LaRouche party, the BüSo, organizing against the government's Hartz IV austerity program, at a factory in Rüsselheim last year.



EIRNS/Renate Leffek

thought up that term, and the Constitutional Court used it in its Maastricht decision.

As there is no such thing as a "People" of the European Union, the latter's prerogatives, lacking as they do all original democratic legitimacy, can be exercised only as though they were decrees about legal decrees. The conferrals must be designed in such a way, that each national Parliament be answerable for any policies that European Union institutions then put into effect. Accordingly, in relation to EU policy, the Bundestag must be answerable. For that to happen, EU policy must be sufficiently predictable, which means that the relevant conferrals must be clearly defined.

The moment one takes the trouble to read the Constitutional Treaty, it becomes quite apparent that that is *not* how things are designed to work. In my petition to the Federal Constitutional Court, I shall prove that the principle of limited conferral has been swept aside, while the prerogatives that have become the subject of conferral are of existential significance for a People, and therefore must not be transferred to a federation of states. The "existential statehood" of the European Union has gone far too far!

EIR: What lies ahead for the Federal Constitutional Court? For the time being at least, it remains the highest court in the land. Should the Constitutional Treaty come into force, however, that will cease to be so.

Schachtschneider: Precisely! The Federal Constitutional Court will lose its powers. In my plea, I show from the very outset the degree to which existential statehood has been transferred to the European Union, thereby flouting the German Constitution. I then show that the principle of limited

conferral has been disregarded.

In a political process, one takes political, rather than dogmatic decisions. Were we to pay strict regard to legal principle, there wouldn't be a shadow of a doubt as to the outcome. As the Constitutional Treaty now stands, the Federal Constitutional Court cannot properly uphold it. The question is whether the Court will simply throw out the entire Treaty—as they should—although they may choose not to. At the very least, they will prune it back sharply, as they did with the Maastricht Treaty, perhaps in the hope that it will break up against the French cliffs. No matter what the French decide, though, my mission must go forward.

EIR: Have similar complaints been filed on Constitutional grounds elsewhere in the EU?

Schachtschneider: Not so far as I know, but I've heard that it's being mooted in Austria.

EIR: Where exactly would you say that "existential statehood" is imperilled, or even lost?

Schachtschneider: In economic terms, we have, manifestly, already lost existential statehood, by which I mean essential national sovereignty. The EU has very largely been handed control over economic policy, and already enjoys full control of monetary policy. Consequently, our hands are tied when it comes to employment and social policy.

We have lost existential statehood in legal matters, that is, sovereignty over the law. That is especially painful. Thanks to this Constitutional Treaty, we are about to lose sovereignty over domestic policy, viz., over police and justice. It goes far beyond this business of the European arrest warrant. In

defense matters, we will no longer get a word in. On account of its belonging to NATO, Germany was never truly sovereign, but now all sovereignty in this area will slip away into EU hands, the EU being of course bound to NATO. The European Council makes the continent's defense policy, and not in isolated instances alone.

EIR: But the worst, to your mind, is in the economic domain?

Schachtschneider: Let us look at the three so-called "fundamental freedoms":⁸ freedom to provide services,⁹ freedom of establishment, and free circulation of capital. The latter, being the worst! One-third of the decline of the German economy may be attributed to that.

EIR: Deregulation in the context of globalization?

Schachtschneider: Yes, we have lifted all restrictions on the circulation of capital, not only vis-à-vis the EU member states, but vis-à-vis the entire world.

EIR: In the World Trade Organization?

Schachtschneider: No, this is not defined in the World Trade Organization agreement, but in Article 56 of the Treaty of the European Community.¹⁰ Not a single MP noticed it though. Since 1994, there has been an across-the-board prohibition on all control over capital flows. This ties our hands, preventing any investment policy by forbidding restrictions on capital transfer; we cannot prevent money and capital and financial assets that have been earned here from leaving the country. Germany has the highest savings rate, but nowhere is there less money invested! Our capital is either invested or transferred elsewhere.

That is quite intolerable for Germany, indeed, a policy problem greater even than wage or social issues. We have tied our own hands! Until such time as we come to our senses, put our foot down and say: Either the so-called "basic freedoms" [as they are defined in the Constitutional Treaty—ed.] will be altered, and a stop put to free circulation of capital, or else we

8. Cf. Title II of the Constitutional Treaty, Article II-75, "Freedom to choose an occupation and right to engage in work."

"Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State."

9. Title III—Internal Policies and Actions, Chapter I, Section 2, "Free Movement of Persons and Services. Subsection 3 of the Constitutional Treaty, "Freedom to provide services," Article III-144 *et seq.* "Within the framework of this Subsection, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended."

10. Treaty establishing the European Community (consolidated version), Chapter 4, "Capital and Payments," Article 56: "Within the framework of the provisions set out in this chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited. . . . [A]ll restrictions on payments between Member States and between Member States and third countries shall be prohibited."

will quit the European Union. If not, the German economy has no chance whatsoever. Any other policy will merely accompany the ruin of our economy, and the citizenry will bear the brunt. Shareholders make hay even in a hailstorm! In fact, an economic breakdown would create the ideal circumstances for privateers to operate. On account of the European Directives, on account of the conditions, the German population is now facing a serious crisis.

EIR: One could hope that the majority would opt for a change in the Treaty, since no European nation stands to gain by all this. But it must be explained to the public!

Schachtschneider: No problem for me. But, oddly enough, none of the big television talk shows—Sabine Christiansen, for example—has invited me yet.

EIR: On account of uncontrolled capital flows, governments are being blackmailed by financial operators—investment funds threaten to drown the market with government bonds. There was a spectacular collapse when Citigroup in London sold off, within two minutes, a huge quantity of German bonds, precisely as the Monday demonstrations took off. The demonstrators were demanding that Schröder withdraw the drastic austerity and expropriation measures included in the Hartz IV Bill.

Schachtschneider: We ourselves gave the blackmailers that power! Neither the population nor our MPs have noticed that, through Article 56 of the Treaty of the European Community,¹¹ we have relinquished to a very great degree our policy-making options. We have relinquished our sovereignty over economic matters. The same applies to the freedom to hire out one's services, whereby the law of the recruit's country of origin may be applied. The country-of-origin principle means that we no longer have political responsibility for absolutely critical activities here in Germany, and can no longer decide how foodstuffs shall be procured, how our labor relations shall be organized. So many other things are now decided by some other country, over whose policy we hold no sway whatsoever. All utterly intolerable from a democratic standpoint.

EIR: This is where the trade union critique of the Constitutional Treaty comes in.

Schachtschneider: By allowing freedom of establishment, companies in Germany will be enabled to adopt juridical structures of other nations, such as the Société Anonyme, Limited Company, and so forth. The European Court of Justice has rammed that through, and what it boils down to, is that the German system of co-determination¹² is dead! In the

11. Part I, Title VII, the Union's Finances, Article I-56, The Union's budget, "A European law shall establish the Union's annual budget in accordance with Article III-404."

12. *Mitbestimmung*



www.refuseandresist.org

The right to life is no longer guaranteed “in time of war or where the peril of war is imminent,” in the new Treaty. Here, a rally in Germany against the U.S. death penalty. The case of Pennsylvania journalist Mumia Abu Jamal has drawn great attention in Europe.

mid-1970s, the trade unions threatened a general strike, unless co-determination were adopted. And now, it’s dead! That is just one of the things that flows from this “country of origin” principle in jurisdictional terms.

Thus, should some “private equity” firm with a French juridical structure come to Germany and take over Siemens or DaimlerChrysler, co-determination is gone, the very next day. This effect of freedom of establishment was not foreseeable, nor could a parliamentarian be answerable for this, in the sense of limited authorization.

EIR: Your suit is the last chance for the Federal Constitutional Court to slam on the brakes—also vis-à-vis the European Court of Justice?

Schachtschneider: The European Court of Justice [ECJ] is the worst. Its latest Presiding Magistrate has stated that “we are the motor of integration.” By referring back to the “basic freedoms,” the ECJ can overthrow the entire legal order, and, to be frank, has already done so to a very considerable extent. In my suit, I launch an exhaustive attack—it takes me 60 pages actually—on the ECJ’s practice in respect of basic freedoms. I state that the basic freedoms are not a limited authorization. The ECJ is itself subject to the principle that the Federal Constitutional Court, in its Maastricht decision, had already, if cautiously, raised in relation to the ECJ. The latter must not interpret the basic freedoms so broadly as to convert its judgments into changes to the treaties.

In its thousands of decisions, the ECJ has *never once* acknowledged that a legal move by the European Union contradicts fundamental rights. The ECJ has always held that everything the Commission and the European Council do, is

perfectly fine.

What is more, the ECJ’s judges have been hand-picked to discharge their responsibilities in “integration.” Their basic wage, 17,000 euros a month, is at least three times what a senior German professor earns—plus expenses. Need one add that such high wages are used to corrupt people? The positions are much sought after, and once one has occupied them, one strives to remain. The Magistrates can be re-elected, and for six years at a stretch! I wouldn’t call that an independent magistracy! In 50 years, the ECJ has never seen fit to strike down a single EU action, on the basis that it contradicted a Constitution or fundamental rights. Don’t expect the European Court of Justice to defend your basic rights.

EIR: Speaking of basic rights: You mentioned earlier on that the Charter of Basic Rights of the Constitutional Treaty does not even reliably guarantee the right to life, and under certain circumstances, would allow the

death penalty to be restored?

Schachtschneider: Yes, let’s turn to the fundamental rights, notably the right to life, and let’s look at this in detail. At Article II-62 of the Constitutional Treaty,¹³ one reads: “No one shall be condemned to the death penalty, or executed.” Fine.

But that is not the truth! The Constitutional Treaty states that the declarations on fundamental rights (that under Roman Herzog,¹⁴ in the agreement on basic rights, were taken over from the European Convention on Human Rights and Basic Freedoms, and discussed at length) are as binding as the the Charter of Fundamental Rights of the Union itself. Reality strikes in those declarations! The aforesaid Charter of Fundamental Rights of the Union is based—at least insofar as the standard basic rights are concerned—on the 1950 Rome Treaty, known as the Convention for the Protection of Human Rights and Fundamental Freedoms. In 1950, there was no option other than to allow the many states within the Council of Europe to retain the death penalty. Germany had abolished it, but France, England, and many other nations still retained it, nor would a Declaration on Human Rights have been possible, had one insisted on its abolition.

13. Part II of the Constitutional Treaty. “The Charter of Fundamental Rights of the Union.” Title I (Dignity). Article II-62. “Right to life. Everyone has the right to life. No one shall be condemned to the death penalty, or executed.”

14. The so-called “Bureau” of the Convention, that acted as a drafting committee or collective rapporteur for the Constitutional Treaty, was comprised of its President, Roman Herzog, and representatives of the European Parliament, the national Parliaments, the Commission, and the Council Presidency). Herzog is a former Presiding Magistrate of the Federal Constitutional Court of Germany, and former Federal President of Germany.

The sovereignty of the republics, of the member states, must be preserved. Their responsibility is toward their own people, and they must conduct the best possible policy. Should there be a practical need for conducting a joint policy, the nations will be prepared to bend a bit to arrive at a solution. Yes, my point of view is essentially Gaullist.

But now, that declaration of 1950, following lengthy discussion, and not simply owing to negligence, was quite deliberately taken over as binding for the Charter of Fundamental Rights of the Union. And those declarations must not only be read, they must be understood!

In the Constitutional Treaty, one reads, “No one shall be condemned to the death penalty, or executed.” But the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms states, “Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary in defense of any person from unlawful violence.”

Fine, that amounts to self-defense.

But then we read, “in order to effect a lawful arrest or to prevent escape of a person lawfully detained.” Here, the 1950 Rome Convention begins to go pretty far indeed; and now we come to the following: “in action lawfully taken for the purpose of quelling a riot or insurrection.”¹⁵

Now, think back to the events at Leipzig in 1989, or to any demonstration where there may be violence, and that might be considered to constitute “riot or insurrection.”

But that’s not all! The 1983 Protocol to the 1950 Convention reads, “A state may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war,”¹⁶ while sub-paragraph 1 of the 1950 Convention’s Article 2 reads, “No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this

15. Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950, Section I—Rights and freedoms, Article 2—Right to life, “. . . Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

“in defense of any person from unlawful violence;

“in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; in action lawfully taken for the purpose of quelling a riot or insurrection.”

16. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms—Concerning the abolition of the death penalty, signed April 1983. Article 2, “Death penalty in time of war. A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions,” and so on.

penalty is provided by law.”

Consequently, the death penalty is possible, “in time of war or of imminent threat of war.”

Now, some will object that at least in Germany, the law nowhere provides for the death penalty. True enough. But should the European Union decide to deploy on “missions,” in other words, warfare in the guise of “crisis interventions,” and should the European Union lay down directives for such a warlike state where the death penalty would become permissible, one will no longer be in a position to allege that fundamental rights laid down in the Constitutional Treaty have been disregarded.

Thus, the right to life is no longer guaranteed “in time of war or where the peril of war is imminent,” as these will be European deeds of law, and these decisions will not be based on Article 102 of the German Constitution on the death penalty having been abolished, but on this cited line of argument. What this means is that the death penalty is now admissible, and it will happen. I can’t blame those who have failed to see this, as they have not spent a lifetime studying public international law and European law. All the more, because reading this thing, this Constitutional Treaty, amounts to assault and battery!

EIR: What further comments would you make on the Charter of Fundamental Rights of the Union?

Schachtschneider: Look at the issue of free media: “The freedom and pluralism of the media shall be respected.”¹⁷ What does that mean, “respected”? The Charter of Fundamental Rights uses about 20 verbs to reflect varying degrees of protection of fundamental rights: “protected,” “guaranteed,” “to have a right,” and so on. “To have a right” is good, but “respected” is the weakest form of protection.

The freedom to teach, which happens to be my own fundamental right, no longer appears at all, and not because it has been overlooked. The text’s shortcomings were publicly criticized and debated. A German MP who took part in the convention to discuss the Charter of Fundamental Rights said, “We won’t be able to push through the freedom to teach.” So the text now reads: “scientific research shall be free of constraint.

17. Article II-71, “The Charter of Fundamental Rights of the Union.”

Academic freedom shall be respected.”¹⁸

What academic freedom might be, is a moot point, while we are well acquainted with the meaning of “the freedom to teach.”

EIR: Does it mean that no one can be ordered about in his teaching?

Schachtschneider: Or that no one can be held accountable for what he teaches. The freedom to teach has always been upheld by the Federal Constitutional Court. Now the politicians have torpedoed it. It still exists, but it is in jeopardy.

EIR: Professorships have increasingly tended to become dependent on private donors.

Schachtschneider: Exactly. Another example: The right to own property, in the Constitutional Treaty, is split from the social issue. Whereas, our very fine Article 14 of the German Constitution reads, “There is a right to property and to inheritance, the contents and limits of which are determined by law. Property entails obligations. Its enjoyment shall also serve the public wealth.”¹⁹

At the present time, the social obligations entailed by the enjoyment of private property is a major issue. Enjoyment of property means both private use, and a duty towards the public. This notion has vanished from the Constitutional Treaty. The Treaty amounts to a neo-liberal Constitution. It flings open the gates to neo-capitalism, pushing far into the background the principle of the common good.

Let’s take a look at the rights of the “elderly.” Whatever does “elderly” mean? One fellow’s always older than the next. “The elderly” is, from a strictly legal standpoint, an absurdity. But these “elderly” people now have a special fundamental right, and one that excludes more than it includes! The elderly now have the right to participate in social and cultural life. How dare one say that! And it’s no accident that the word “political life” does not appear here! Whatever can this mean? That the “elderly”—when in doubt, brand them as afflicted with dementia—will no longer have a right to vote?

It should be obvious, shouldn’t it: No matter how old one is, one retains the same rights. It has nothing to do with one’s age. Special rules for the elderly spells flat-out discrimination. Naturally the Constitutional Treaty lays down specific rules for the young, for men, for women.

Little is left of wage autonomy. In Germany this has been a sacred concept; wages and salaries negotiated by labor and management do get a mention at Article II-88 of the Constitutional Treaty. Although the right to strike persists, reservations have been written in, that amount to severe limitations on wage autonomy.

According to Article 9 (3) of the German Constitution,

agreements for a minimum wage are, in principle, inadmissible, because wage levels are only to be negotiated, jointly, by associations of employers and trade unions. The recent debate over the minimum wage has arisen on account of European law, and on account of the wage-dumping that necessarily goes along with allowing employers to recruit staff at the wage-level they would have been paid in their country of origin.

In terms of fundamental rights, the position of German citizens will take a sharp turn for the worse. This much-touted European Charter of Fundamental Rights is, in actual fact, a terrific blow to the concept of lawfulness, to a culture of lawfulness. It stands as the opposite pole to progress. That alone should be enough to have us lining up in battle formation against the Treaty.

EIR: What about the European arrest warrant, and the case of this businessman who may be handed over to Spain?

Schachtschneider: Outrageous! The European arrest warrant will be thrown out by the Federal Constitutional Court. The process has begun already; a hearing has already taken place, where the Court was clearly highly critical. Were it to find against the European arrest warrant, this would be a signal for our own suit. In that suit, we have gone into some depth concerning the European arrest warrant. It is outrageous, because it contradicts the very principle of a constitutional state, namely, that the state is there to protect its citizens.

Yet another critical right will vanish from the German Constitution, namely, that no German citizen may be handed over to another state. The European arrest warrant will allow someone to be arrested and deported, even under circumstances where in Germany itself, the deed in question would not qualify as an offense! This is monstrous. Until now, the principle was that of reciprocity: The deed had to be a criminal offense both in Germany, and in the foreign country concerned, before someone could be deported. What is more, the punishment meted out abroad had to be appropriate, which notably meant, no capital punishment. In the case you refer to, a citizen is to be deported, although [in Germany], he acted within the law. He is a German citizen; he happens to have double nationality, but was nationalized a German. He is now to be deported to Spain, for a deed that is not an offense in Germany.

EIR: What is at stake is the issue of legal certainty, I suppose?

Schachtschneider: Yes, the notion of constitutionality, the principle of lawfulness, the principle of legitimacy, namely, that one is allowed to do whatever the state in which one resides does not prohibit. I expect that the Federal Constitutional Court will not go along with this.

By introducing a European Public Prosecution Service, we also lose our sovereignty in criminal matters, not entirely, but to a very great extent. This is set out in Chapter IV: “Area

18. Article II-73, “The Charter of Fundamental Rights of the Union.”

19. Unofficial translation.



EIRNS/Chris Lewis

“The freedom to teach, which happens to be my own fundamental right, no longer appears at all [in the Constitutional Treaty], and not because it has been overlooked.” Here, students in Wiesbaden, Germany, protest education budget cuts in 2003. The banner reads, “Money is round and rolls away, but education remains.—Heine”

of Freedom, Security, and Justice.” Sounds wonderful, but the reality is otherwise. Little is left of freedom and security. What sort of security do we mean? Security of the grave? Security of a jail cell? And justice? In this process of European integration, justice stands to lose the most.

EIR: Let’s assume that the French reject the Constitutional Treaty, and that the Federal Constitutional Court follows suit. Whither Europe then? To replace this monster Constitution, we shall have to come up with a fresh idea.

Schachtschneider: I certainly do not intend to liquidate the European Union. Imagine that the Constitutional Treaty never comes into force—that would in no way affect the EU’s ability to act. The applicable law will be the Treaties of Maastricht, Amsterdam, and Nice, that came into force in 2003. They refer back to the Treaty of Rome, the Single European Act, and so forth. That’s what’s left.

EIR: Until they too be amended.

Schachtschneider: Public international law allows for altering a Treaty, through a fresh Treaty.

EIR: What would be a better arrangement for Europe, than, for example, the Maastricht Treaty? Seen from our standpoint, what is truly awful about that Treaty is the independent status of the European Central Bank. The ECB is not altogether enchanted with the Constitutional Treaty, as it stands to lose some of its overweening powers. But this ECB, answerable to nothing and no one, is itself a grotesquerie, edified

by the financial oligarchy—the crowd which has rammed through deregulation—thanks to the Maastricht Treaty. In 1992, this was actually a kind of coup d’état!

Schachtschneider: That is precisely how I described the Maastricht Treaty. Whereupon, the news weekly *Spiegel* picked up the term “coup d’état,” in its reports on our lawsuit against the Maastricht Treaty.

EIR: Curiously enough, there are crossed wires between the Schröder government and the ECB concerning the Bundesbank as part of the Central Bank system. Schröder wanted Professor Bofinger to succeed Otmar Issing in the ECB Council. The chairman of the Bundesbank, Axel Weber, and his deputy Jürgen Stark were summoned to Berlin, after they had voiced loud criticism of the attempts to loosen up the Stability Pact. The government appears to have gone onto the offensive.

Schachtschneider: Article IV-445 of the Constitutional Treaty naturally enables a complete change in the rules of the Currency Union. To my mind, the ECB’s days of independence are

numbered. Under the Constitutional Treaty, the ECB will still be independent, but the heads of State and Government can change that. This moot article was not drafted by Giscard d’Estaing, but was inserted later, and turns up for the first time in the draft dated October 29, 2004. I’ve no idea who inserted it. It could of course also be used to abolish the ECB’s independence. The French are opposed to an independent ECB, and so am I.

EIR: And so are we.

Schachtschneider: Unlike my friend and collaborator Joachim Starbatty, who defends the independence of the ECB, my view is that the European Central Bank lacks all democratic legitimacy. What the Federal Constitutional Court let slip through the net at the time, is very doubtful indeed.

The policy of the Central Bank, that has no obligation other than to uphold a stable currency, is a disaster for employment. To me, I should be truly happy, were the ECB to vanish overnight. Remember that we also filed suit against the euro. Reducing currency policy to mere price stability is the precondition for free circulation of capital, seen from the standpoint of the worldwide capital market. But anyone with any objectivity left knows full well how prejudicial that is to employment. I will not be talked into believing that currency policy and employment policy can be split up, no matter how loud the protests from the neo-liberals!

EIR: There are various criteria for the “stability” of a domestic economy. One must head off inflation, yes, but heading

Let there be no overall body on supranational level, laying down policy! The alliance must rest upon national sovereignty, while the nations should organize their cooperation according to practical reason.

off unemployment is equally important!

Schachtschneider: In 1998, in the suit we filed with the Federal Constitutional Court against the euro, we made quite plain what we mean by stability: Stability, from an economic standpoint, means the magic square—price stability, full employment, balance of foreign trade, and growth all take equal place, based on a market economy. I am led to believe that this is how the Federal Constitutional Court also sees stability.

EIR: As does the stability law of 1967.

Schachtschneider: Precisely! And that is where I stand full square, beside Wilhelm Hankel and Wilhelm Nölling. In that respect, we go hand in hand.

EIR: In the conflict between the ECB on the one side, and the European heads of government on the other, I'd opt for the latter, as they certainly possess more legitimacy.

Schachtschneider: They are more democratic—

EIR: —while the ECB lacks all legitimacy.

Schachtschneider: That is perfectly clear, from a democratic standpoint.

EIR: I'd like to raise the matter of the 1961 Fouchet Plan, named after de Gaulle's Foreign Minister Christian Fouchet. De Gaulle wanted the European Union to have various institutions, that would nonetheless be subordinate to the national governments and Parliaments. Their existence would not be to the detriment of national sovereignty, or "existential statehood" as you put it. This was the very opposite pole to a supranational Europe. Would not such a European Union, an alliance of states, be a suitable and constitutionally appropriate solution for Europe today?

Schachtschneider: To my mind, yes. I see it as a "Republic of the Republics," a "Federalism of Free States," as Kant would have said. The sovereignty of the republics, of the member states, must be preserved. Their responsibility is toward their own people, and they must conduct the best possible policy. Should there be a practical need for conducting a joint policy, the nations will be prepared to bend a bit to arrive at a solution. Yes, my point of view is essentially Gaullist.

But such a European super-state will never, can never be democratic—if only because of its huge size. Therefore it can never be a constitutional state. There is no such thing as a constitutional state without democracy.

A European super-state leads, in truth, to the danger of war. Indeed, it intends to wage war, the military part of the Constitutional Treaty includes a duty on the members to spend more on arms. The super-state commits itself to bring about peace in the world alongside the U.S.A. Europe wants to be a superpower, very decisively so, and that means waging wars of the kind that the U.S.A. is now waging. Whatever your own views may be, I'm against it. These wars are a breach of international law. The war on Iraq is unprovoked aggression, and few German specialists in public international law would contend otherwise. I've been very outspoken about that.

The one and only obligation on a state is defense. One can enter into an alliance, but that alliance should not itself enjoy overweening powers. Large states are a constant threat to smaller and weaker ones, and such a super-state is a danger to the other nations of this planet. I believe in smaller entities. Switzerland can defend itself, small as it is. It's many a moon since Switzerland was attacked; nor will it be attacked.

Furthermore, a European super-state will grind down all free institutions. The world will not look the way the neo-liberals and neo-capitalists claim it will. It will be something quite different. The population will be oppressed. But a stop will be put to this form of globalized robber-baron capitalism. Nations will vote against this, even in European elections. But by that time, the free institutions will be gone, because European policy, particularly the free-market fundamentalists with their frenzied race for free competition, will have dug their own grave. That is why these people are in such a tearing rush—they know full well that this particular form of capitalism is no lasting state of affairs.

The middle ground, what Ludwig Erhard²⁰ called the "social market economy," and that I would rather call "a capitalist social economy," is probably the right one. With many republics, many and varied institutions where people can move forward and develop themselves, whether in their profession, or otherwise. Such pluralism is an integral part of freedom. But they are attempting to steamroller that away, trample all differences under foot. The principal language of trade and diplomacy in Europe will not be the German language, which I consider a cultural loss.

I am against the super-state, flatly against it. De Gaulle's Europe of the Fatherlands, Europe of the States, is to my mind the right way, in terms of freedom, too. A super-state will

20. Chancellor of Germany from 1963 to 1966.

never allow such freedom.

EIR: Jacques Cheminade, our man in France, had a leaflet distributed during the referendum campaign on the Constitutional Treaty, where he tore the Constitution apart point by point, and made a number of constructive proposals.²¹ In addition to huge investment in Eurasian infrastructure projects, he proposes that the European Central Bank be replaced by an alliance of national banks. How do you see that?

Schachtschneider: Would that mean that in such an alliance, the national banks would each be responsible for the respective national currency?

EIR: The concept of a national bank as we see it, stems from the National Bank of the United States under Alexander Hamilton,²² where money is put into circulation for infrastructure and development, as we saw here in Germany with the Kreditanstalt für Wiederaufbau. The National Bank, as the locomotive for domestic economic progress.

Schachtschneider: That is my view as well. A nation can succeed as an economy, only if it has control over its credit and financial system. We have let that slip from our grasp. The underdeveloped countries have not been able to take off, Africa and so forth, because they do not control their own financial system. Outside credit has plunged those nations into still greater misery. Sovereignty over one's own money, one's own credit and currency, is critical to the existence of a state. In the Maastricht suit that we filed, I stressed that this is one aspect of existential statehood. That is why we have filed suit against the Constitutional Treaty as well.

A national bank is answerable, democratically. The Bundesbank differed greatly from the European Central Bank, because it was answerable to Parliament. Parliament could alter its aims, and prescribe other instruments, whereas the European Central Bank is totally independent. The European Central Bank has only followed the Treaty. This currency policy prevents us from reacting to domestic economic events, by revaluation or devaluation and so forth, and prevents us from putting to rights a mistaken approach. As a result, pressure is applied for a flexible wage policy, because that is the only option left, given such wrongheaded currency-union arrangements.

An alliance is supposed to mean coordinating policy. That would be fine, on condition that the sovereignty of each nation remain. I favor an alliance, I favor an alliance of states where each state bears responsibility for its own policy. Accordingly, let there be no overall body on supranational level, laying down policy! The alliance must rest upon national sovereignty, while the nations should organize their coopera-

tion according to practical reason. How's that for a fine piece of political culture for you!

EIR: Relative to international currency and credit arrangements, the time is over-ripe for reorganization. As you know, we are pressing for a New Bretton Woods system.

Schachtschneider: There must indeed be a New Bretton Woods system. I myself have no doubt but that a currency reform is in the pipeline. I am sure that the U.S.A. will eventually come up with a new currency policy, even issue a new currency, or assign a new value to the dollar, to deal with their gigantic deficit and their dollar-denominated debt.

EIR: But our idea of a New Bretton Woods system is quite unlike that.

Schachtschneider: I can well imagine that it is!

EIR: Finally, you are the author of *Res publica res populi*. What to you is the essence of the Republic?

Schachtschneider: Freedom! I see freedom as political freedom, in the straight Kantian sense. Freedom is the substance of the law, and for that one needs the state. Freedom means living with others with due regard to justice; one must discover what is rightful, acknowledge its rightfulness, and make it binding on all in the form of law. That is Rousseau! A law binding on all, and that works to no man's prejudice, because each and all are the authors of the law, each and all are law-makers. A law binding on all, is a law that all have worked to make.

This is a radically democratic theory of legislating through each and every citizen, an approach to representative government quite incompatible with a party-political state, but one that takes very seriously the committed conscience of each MP. An MP must represent that inner freedom, a commitment to the moral law. He must legislate, representing morality.

Morality has its own law, the categorical imperative: Adhere to those policies that you would wish to become a law binding upon all. Respect others in their humanity, and live with them in accordance with laws that have been made in common. This notion of morality is one that can be expressed, in Christian terms, as "Thou shalt love thy neighbor as thyself." The categorical imperative is none other than the principle of Christian love: One must respect, not oppress, one's fellow man.

That, to my mind, is what is meant by a Republic, and one that can be realized, as we have just seen, only through a multitude of smaller entities.

EIR: Thank you, Professor Schachtschneider.

Schachtschneider: My pleasure! Why can I not be given an hour to explain these things on ZDF or ARD?²³

21. See "Cheminade Says 'No' to European Constitution," *EIR*, April 8, 2005.

22. Alexander Hamilton (1757-1804), the first U.S. Secretary of the Treasury, and founder of the National Bank of the United States.

23. German national television channels.