



Webpapers on
Constitutionalism & Governance
beyond the State

Year 2001 | No 3

Europe Goes Camper: The EU Charter of Fundamental
Rights From a Consumerist Perspective

Ulrich Haltern

ISSN: 1756-7556

conWEB – webpapers on Constitutionalism and Governance beyond the State

www.bath.ac.uk/esml/conWEB

Europe Goes Camper

The EU Charter of Fundamental Rights From a Consumerist Perspective

by Ulrich Haltern

ulrich=haltern@rewi.hu-berlin.de

Perhaps you know the feeling. You're sitting at your desk, a little bored by your work, and you're looking around, hoping for inspiration. More often than not, however, all you get is more distraction. The other day, while battling with a question of European Union law, I had a very different experience. It was a cardboard box, with a pair of shoes I had recently bought, that was the eye-catcher. The box and the shoes were made by Camper, a Spanish-based company that is all the rage in Germany. (You're familiar with Camper shoes, even if you don't know it. Last spring, virtually everybody wore them. They are shaped a little like running shoes, or shoes that, fifteen years ago, were called "Roots", and they boast brightly colored shoelaces and seams that never go with the color of the leather.) Who would have thought the print on the box of a pair of Camper shoes and the Charter of Fundamental Rights of the European Union neatly fit together?

I

The print on the box says,

Camper is not a shoe. Camper is the result of a dream. The dream of a family from Mallorca that has been making shoes since 1877. A Mediterranean dream that stands for a way of doing, a way of living and a way of feeling. A dream that combines the original artisan roots with an industrial vocation. A dream that has taken Camper on a walk across the world. As in ancient myths, Camper is a modern David, challenging with quality, irony and imagination, the Goliaths of style and fashion. However, Camper is above all something very personal: a team of men and

women with local values and a global horizon. A team of people that share a different way of walking through life...

A slogan, in large red letters, interrupts the text flow in the middle, proclaiming that Camper is “A Great Little Company”.

The most immediate (though, at the same time, most banal) connection between my new pair of shoes and the old question of Europe shows when you manipulate the text a little, for instance by replacing “Camper” with “EU”. Something like the following:

The European Union is not an international organization. The European Union is the result of a dream. The dream of the European family that has been living together for thousands of years. A European dream that stands for a way of doing, a way of living and a way of feeling. A dream that combines the original cultural roots with an economic vocation. A dream that has taken the EU on a walk across the world. As in ancient myths, the EU is a modern David, challenging with quality, irony and imagination, the Goliaths of economic life. However, the EU is above all something very personal: a team of men and women with local values and a global horizon. A team of people that share a way of walking through life...

Of course, you have to twist historical facts a bit. After all, European nation-states colonized the whole known world, and a similar charge was levelled at the Union. Instead of heralding the end of the nation-state, the Union, according to some critics, continued the nationalistic project of colonialism. European integration, then, is all but the imperialistic attempt to achieve collectively what the individual empires of Europe’s nation-states failed to do alone: namely reach a dominant position in the world economic system.¹ To talk about a “David” is, therefore, awkward. It is credible only if you play out the Europe that was destroyed by the War against the economic super-powers, the United States and Japan.

Apart from that, however, the European reading of the cardboard box has some truth and charm. The Union’s birth not from economic rationality, but from a dream of peace and reconstruction is at the center of the text, and deserves close study by libertarians. Since Maastricht, the Union has styled itself as a community close to its citizens, with its legitimacy flowing from two opposite

¹ Johan Galtung, *The European Community. A Superpower in the Making*, London: Allan and Unwin 1973, at 16; Tom Nairn, *The Break-Up of Britain*, London: New Left Books 1977, at 306-28.

sources: one is cultural roots, the other economic rationality. Local values and a global horizon don't always come together in harmony, though. On the one hand, most politicians, also some lawyers, appeal to a common history, to shared cultural values, to a Christian-occidental tradition, and to Latin as Europe's once *lingua franca*. Europe is thus erected, at least discursively, as a community of values, with deep-reaching roots and wrinkles. On the other hand, the logic of the market and the rationality of money push beyond such narrow, localized horizons. They leave Europe impersonal and rational, a designer surface, uprooted and faceless.

It is precisely this contradiction that an adequate analysis of the Union and its Charter needs to start out from. It is impossible, through purely functional description, to capture the *gestalt* of the Union, just as a functional analysis of Camper shoes will necessarily have to fail. Description and analysis today will have to move to, or at least include, the level of the aesthetic. The much despised and oft-scolded world of consumerism has taken this to heart long ago. Legal analysis has not. The student of the European Union and its law will, at first glance, discover a huge variety of approaches and schools. On closer inspection, though, she will discover a core of sameness. The EU narratives are tried and true and reminiscent of a round of old buddies, having conversations, either affirmative or critical, which unfailingly sport a core of what you might want to call consensus, or at least, affinity. Nevertheless, equally unfailingly, they seem to miss the nerve of the Union's *gestalt*. The Camper shoe box – and the aesthetics of consumerism in general – is the perfect analogy to drive this point home.

II

The first thing we can learn from the Camper shoe box is that we need a different perspective on political and legal events. You're not going to understand the Camper shoe phenomenon if you describe Camper the Company, or if you analyze the function of shoes. You will have to deal with an altogether different level of observation, and with a different object of description. Recent studies of consumerism show what I mean. Daniel Harris, for one, attempts to recover the suppressed aesthetic data of our lives and to make the vast archive of subliminal images accessible to conscious analysis. He feels it necessary to describe

consumerism on the level on which the consumer actually experiences it: on the visceral level of the senses, the bodies, “from the point of view of the hand reaching for the soup can on the store shelf, the ears listening to the boom box broadcasting the sounds of a cool, refreshing soft drink splashing into a frosted glass, and the eyes fixed on the screen of the multiplex as the *Titanic* sinks”,² or, of course, fixed on the print of a Camper shoe cardboard box.

The Union, too, must be subject of aesthetic discourse. It is a bit surprising that it practically isn't³ because for decades now, the Commission has been talking about “A Citizens' Europe”. The citizen perspective should be important then, and it would be enormously helpful to examine the Union on the visceral level on which the Union citizen actually experiences it. Much less surprising than the lack of aesthetic discourse would be the analytical result, which is nothing less than disastrous. The Commission continually bemoans the fact that Europeans feel alienated from the Union, that they have disappointed expectations, that there is a widening gulf between the Union and the people it serves – and wonders why.⁴ The answer is right there, in its face, on its own web site. Look up the European anthem (it's the over-played “Ode to Joy” from Beethoven's Ninth Symphony, available as high-quality recording or, perhaps for the busy, compressed recording⁵), the countless Jean Monnet Awards, the European Woman of the Year Awards, the European Years of Whathaveyou (Cinema, Culture, the Environment), the officially designated Europe Day (it's May 9th, commemorating the declaration by Robert Schuman in 1950) – look these things up, and you will have an intuitive understanding of the citizens' complete indifference towards “their” Union. That feeling deepens when you see the over-used European flag (you know the one: twelve golden stars form a circle against a blue background), even though it professes to be a symbol of everything that is said to make

² Daniel Harris, *Cute, Quaint, Hungry and Romantic. The Aesthetics of Consumerism*. New York: Basic Books 2000, at xiv.

³ With a few exceptions. One is Cris Shore, *Building Europe. The Cultural Politics of European Integration*. London/New York: Routledge 2000.

⁴ For a recent example of the Commission's stunned disbelief and disappointment see Commission, *European Governance – A White Paper*, COM(2001) 428 final, Official Journal of the European Communities 2001/C 287/01, at 5 (http://europa.eu.int/eur-lex/en/dat/2001/c_287/c_28720011012en00010029.pdf).

⁵ http://europa.eu.int/abc/symbols/anthem/index_en.htm.

Europeans European: from the Occidental via the Religious to the Esoteric. The number of stars is fixed, twelve being (as the Council of Europe has it) a symbol of perfection and plenitude, associated equally with the apostles, the sons of Jacob, the tables of the Roman legislator, the labors of Hercules, the hours of the day, the months of the year, or the signs of the Zodiac. Twelve is also a representation of the Virgin Mary's halo of stars of in the Revelation (from which, according to some interpretation, the new Messiah will be born). Thus, it seemed the symbol *par excellence* of European identity and European unification, a rallying point for all citizens of the EU.⁶

The political aims behind these initiatives were, of course, ambitious, trying nothing less than to reconfigure the symbolic ordering of time, space, information, education, and the media, to reflect the "European dimension". In the end, it seems, all these initiatives failed miserably.⁷ What's more, they are not without a certain comic effect. It was Kierkegaard who said, "Just as much pathos, just as much comic effect. They secure each other." At this point, we are in the midst of a discussion of aesthetics. What, after all, is pathos? Pathos suggests stylishly domesticated passion. That's mistaken though. The new and distinctly European problem of pathos is not life's eventful turbulence, but rather the paralysis of all expression in a hieratic world of gestures. Formulas of pathos are designed to formally inject new tension into a frozen, rigid world and make it move again.⁸ Pathos is thus a final escape from problems of meaning – and *that* is the context to discuss the European pathos not just of anthems and flags, but of the Charter of Fundamental Rights as well.

III

The European Union's problem of meaning is, of course, the problem that its citizens are completely indifferent towards it. The Union produces texts which nobody reads and nobody knows. Nobody is interested. That has fatal consequences. Texts, legal texts above all, are a polity's memory, if you want the

⁶ All of these descriptions are from official European Union documents. For references see Shore (supra note 3), at 44-50.

⁷ A recent study, conducted by OPTeM for the Commission, confirms this finding: http://europa.eu.int/comm/governance/areas/studies/optem-report_en.pdf.

⁸ See Norbert Bolz, *Die Konformisten des Andersseins*. München: Fink 1999, at 119-20.

hard disk storing authentic witness. In nation-states, some legal texts – constitutions – embody ideal historical meaning which links the present to the past, to some point of origin, like a revolution and the consecutive writing of the constitution. Such texts constitute states as “imagined communities” and continue them over time. They can claim loyalty as their source of moral support because they are “ours”.

Union texts are not “ours”. They are just texts, empty shells with no roots. Rather than an embodied set of meanings they are seen as a set of ideas without the power to make a claim upon the citizen. They do not bear deep social meaning. In the Union, there is nothing to remember, and hence nothing to maintain. Union texts do not constitute a collective self; rather, they constitute a Common Market. Markets cannot tell us who we are: they operate through desires, which are mere placeholders. We have no character, only desires. The desiring body is not read, it is satisfied. It makes no public appearance to others and leaves no trace. Its very existence is a matter of indifference to others.⁹ Money, the universal means of exchange on the market, is the perfect example. There is nothing with less memory than money. There’s an old saying that says you shouldn’t conduct money business with friends or foes. The perfect business partner is thus someone completely indifferent, gauged neither for nor against us.¹⁰ The category of price, it seems, makes history and individuality disappear. Remarkably, it is precisely at the point of this total indifference where the European rationality of the market and the European social contract – concluded by unencumbered selves behind the veil of ignorance – converge.

No history, no identity, no individuality – that’s not how you produce and maintain social and political meaning. We do not reach ourselves through markets and reason alone. We cannot reason about, or trade in, the symbolic dimension of meaning. Whereas money and reason create borderless fluidity, political and social meaning needs to be rooted. The Union’s legal texts are lacking in the way they look to the past, and they are unable to stabilize anything deeper than the ever-changing fluid surface of trade, travel, and consumption. That is the reason why the EU, in the eye of the beholder, appears so breathless.

⁹ Paul W. Kahn, *The Reign of Law. Marbury v. Madison and the Construction of America*, New Haven/London: Yale UP 1997, at 86.

¹⁰ Georg Simmel, *Philosophie des Geldes* (1900), Frankfurt a.M.: Suhrkamp 1989, at 290-1.

As there is no memory to store meaning, meaning needs to be generated through political action, again and again and again. Meaning, in the Union, exists only within transitory and forgetful moments. It is ahistorical and respects neither borders nor authenticity. Without reservoirs of meaning, there can be no room or time to have a breather, read the legal texts and realize their ideal content. There can be no stable meaning; there can be only frantic, restless and ceaseless production of ever-new meaning. That's why we are hardly able to read through the Treaty of Nice before, with its ink not dried yet, we hear talk of the post-Nice process and plans for the next Intergovernmental Conference.

The Union's demiurges know their political theory, of course. They know about the Union's problem of meaning, and react to it. They are familiar with the notion of symbolic politics and create symbols. They have read Benedict Anderson and Eric Hobsbawm and have "invented traditions". And they have understood the overwhelming presence of the aesthetic in our lives. You'd think their gaze, too, has been caught by the Camper shoe box.

IV

The talk of a "modern David, challenging the Goliaths of style and fashion," is meant to direct our sympathies to the supposed underdog. Behind this banal strategy, however, lies a principle of consumerism. One of the most important functions of the aesthetics of consumerism, writes Harris, is to provide us with an emotional cushion, a form of camouflage, a credible disguise for a culture that refuses to admit the truth about itself. We don't like to see ourselves as consumers, or our culture as that of consumerism. We continue to pretend that our values are those of an intimate world full of Mom-and-Pop businesses, rather than an overpopulated megalopolis dominated by multinational cartels. The aesthetics of consumerism helps us keep that faith by hiding consumerism from consumers. They combat our estrangement from a world packaged in plastic by restoring the "aura" of the handmade to our commodities. They also shore up our sense of selfhood and individuality, which have been deeply compromised by the conditions of urban society. The aesthetics of consumerism have incorporated our distrust into their marketing techniques. They have built into consumerism symbolic forms of resistance to it: ineffectual strategies of rebellion that make consumers believe they are loners or oddballs, immune to advertising strategies

rather than at the mercy of Madison Avenue.¹¹ The perfect disguise for conformity has become rebelliousness. You buy shoes which remind you of running shoes, and feel like a rebel battling the conformist obligation to wear conservative shoes with dark laces to work. You're being in control, capable of action and rebellion, rather than being controlled: you "dare to 'be different'".¹² In fact, all you actually do is wear Camper shoes, just like everybody else.

It is possible to identify a number of broad principles that govern the appearance of popular culture, among them cuteness, zaniness, coolness, and idyllic quaintness. Quaintness responds to the discontent of a culture trapped in an eternal present. It disfigures things to eradicate the stigma of their newness, their disturbingly characterless perfection which smacks of the alienating anonymity of assembly lines. Quaintness also compensates for the absence of real personal history. We hide our sense of uprootedness by creating a sepia-tinted simulacrum of history and "instant" traditions. Even, and especially, those who are cut off from history, like we often are, feel the need to establish something like continuity with the past. The result is quaintness riding roughshod over authenticity. It often mourns the loss of cohesion in family life and of the intimate circle brought together around the fireplace by darkness and cold weather. Quaintness is the industry's tool to help reduce our deep-seated distrust of advertising and our fear of shoddy goods. It rectifies problems that consumerism itself creates, and allows us to express our discontent with consumer culture and society. That is behind Camper's assertion its shoes are the product of a "dream of a family" and go back to "artisan roots". These shoes are manufactured by "a

¹¹ Harris (supra note 2), at xxi-xxiii.

¹² The consumerist aesthetics of Camper try to cash in on precisely that point. This is what their web site says: "68 different walks of life. Camper is not a shoe, it is not about design, and it is not about style because you are different than your neighbor, than your cousin, than your psychiatrist. Camper stands for freedom of choice, of doubt, freedom to absolutely want all of them or none. At Camper, to be different is an inalienable right. For that reason, here you will find 68 different ways of feeling, living and walking. 68 shoes in search of a story: your story." (<http://www.camper.es/CAMPERINGLES/caminar/mira/index.html>). However, they are still just shoes we are meant to buy, and that's what they are telling us, too: "They make you think. They make you feel. They make you walk. They put your feet in the ground, but at the same time, they maintain you at a prudential distance from it. They are the stars of this section. They are Camper. They are shoes. And beware: they always act in pairs. Discover them. Desire them. 'Walk them'." (<http://www.camper.es/CAMPERINGLES/caminar/index.html>, my emphasis.)

team” of men and women, people with “local values” who “share” a common way of walking through life. The Camper Company is not a multinational cartel, but a “Little Company”. Of course, even the most gullible consumer recognizes that a company as successful and mass-selling as Camper is, can’t be producing its shoes at the homestead’s workbench, handcrafted and old-fashioned. That’s what the “global horizon” and the “industrial vocation” are for. And yet, it’s all about “something very personal”. The credible claim that mass-produced articles aren’t mass-produced articles is the key to Camper’s success. It is also what the European Union is after. As a vehicle to this claim, it has chosen, not the print on a shoe box, but the Charter of Fundamental Rights.

V

The EU Charter of Fundamental Rights, solemnly proclaimed during the IGC in Nice on December 7, 2000,¹³ serves the same purposes as the print on the Camper shoe box. Both, the appearance of popular culture in the form of quaintness and the Charter, are meant to offer us symbolic ways of expressing discontent, and to neutralize our feelings of inferiority, caused by our status as objects, not subjects, of globalization and international trade.

The Charter has no other use than that associated with consumer aesthetics. In the face of the laughter and merriment surrounding the Charter it is important to point out that the European Court of Justice has developed, for more than three decades now, a rich and differentiated human rights case law. Since 1969, at least, the Court has invalidated Community legislation that violates EC fundamental rights. The rights “text” that underlies this jurisprudence is not a written document. Rather, as the Court has repeatedly stated, fundamental rights form an integral part of the general principles of EU law. In finding those rights, the Court draws inspiration from constitutional traditions common to the Member States and from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 1950.

Does the newly proclaimed Charter offer better protection of fundamental rights? The Charter itself says no. In its Chapter VII, it admits that neither the

¹³ Official Journal of the European Communities, December 18, 2000, C 364/01 (http://europa.eu.int/comm/justice_home/unit/charte/pdf/texte_en.pdf).

scope of the rights it guarantees is broader, nor the level of protection is higher, than the case law status quo.

Clarity is another common justification for the Charter. However, like all human rights documents, the Charter is drafted in magisterial, sometimes cloudy language. While there is much to say in favor of such constitutional traditions, clarity is not one of its features.¹⁴

Is it, then, at least a symbol of shared European identity? Hardly. While it was solemnly proclaimed, it has no binding legal force. Some regard this as a symbol, not of shared identity, but of European impotence and of refusal to take rights seriously.¹⁵ Even if it is bound to become law some day, doubts remain about its integrative force. Europe already has a pronounced culture of rights, with a tightly knit web of fundamental rights protecting its citizens: bills of rights in *Länder* and federal constitutions, the EJC rights jurisprudence, the ECHR and its human rights court in Strasbourg, and the two 1969 UN Covenants on Civil and Political Rights, and on Economic, Social, and Cultural Rights. Waving yet another catalogue of rights in a culture of rights saturation will not make the citizen any closer to the Union.¹⁶ It is an additional delightful detail that the community of Europeans is expected to assemble under the umbrella of a Charter that will grant them legal protection against legislative acts from Brussels – a European community *against* the European Community.

Why, then, is it that so much money, and so many resources, are lavished on the Charter if there is so little to say for it, either legally or symbolically? The answer is, it's aesthetic. The Union wants the Charter to de-stigmatize itself and to neutralize our distrust. The vehicle is quaintness. The Charter compensates for the lack of real European history. Notwithstanding all rhetoric the Union is a young entity with no model or predecessor. Europe has, not one story, but a multitude of stories which are contradictory, competing, and violent, and which need to be reconciled with each other. Europeans think of "their" Union as faceless Brussels bureaucrats, smooth, modern, insipid, and completely characterless. The Union suffers from its unrooted newness. Its insatiable surge

¹⁴ J.H.H. Weiler, Editorial: Does the European Union Truly Need a Charter of Rights?, 6 Eur. L. J. 95 (2000), at 96.

¹⁵ Weiler (supra note 14), at 96.

¹⁶ I am by no means alone with this judgment. See only J.H.H. Weiler, *The Constitution of Europe*, Cambridge: Cambridge UP 1999, at 334-5.

forward cuts it off from the past. That provokes its citizens' distrust, and they refuse it their loyalty. The Union is seen as the epitome of bureaucratization and centralization. It rationalizes life (through international division of labor) and depersonalizes the market (through internationalization). It emphasizes competition and transborder trade of goods through the Common Market, thus appearing as commodification of values personified. In addition, there is the peculiarly modern angst because truths and certainties crumble, identities become fragmented and transitory, feelings of displacement and uprootedness grow, and all that is solid melts into air. The Union ideally attends to such anxieties.¹⁷

The Charter of Fundamental Rights is the Union's designers' program to steer in the opposite direction. The Charter's solemn declaration evokes the spirit of the Virginia Bill of Rights of 1776 and of the Déclaration des droits de l'homme et du citoyen of 1789. In part, this is deliberately done in order to create the impression that the Union's roots reach back to the origins of modern democracies. Perhaps, what is hoped for is not merely a solution to the problem of lacking history and character, but to that of democratic legitimacy as well. By proclaiming a catalogue of rights, the Union adorns itself with the embellishments of the fountains of democracy – among them, the principle of popular sovereignty.¹⁸

At the same time, in reaching back to 1776 and 1789, the Union creates patina for itself. Patina is a physical property of material culture which consists in the small signs of age that accumulate on the surface of objects. The surface of objects, originally in pristine condition, takes on a surface of its own, being dented, chipped, oxidized, and worn away. This physical property is treated as symbolic property: it encodes a status message and is exploited to social purpose. That purpose is the legitimation, authentication, and verification of status claims.¹⁹ Just as newly acquired wealth, in a world of traditional hierarchy, was under pressure to provide visual evidence of the authenticity of its status claim, the Union is trying to secure and verify its status in a world of nation-states. The Union is the nouveau riche in Europe and needs to prove its wealth is not

¹⁷ Weiler, *Constitution* (supra note 16), at 260-1.

¹⁸ This connection has also been detected by Paul Craig, *Constitutions, Constitutionalism, and the European Union*, 7 *Eur. L. J.* 125 (2001).

¹⁹ On the function of patina in material culture see Grant McCracken, *Culture and Consumption*, Bloomington/ Indianapolis: Indiana UP 1988, at 31-43.

fraudulent. The gatekeeper that controls status mobility is patina. The Charter, of course, is meant to be the chipping and oxidization on the EU's pristine surface.

The Charter also conjures up an atmosphere of solidarity, brotherly love, and transgenerational community (the political theory equivalent of the intimate circle gathering around a fireplace). The Preamble, for instance, provides that “[e]njoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.” The Charter's individual chapters have the following headings: I – Dignity; II – Freedoms; III – Equality; IV – Solidarity; V – Citizens' Rights; VI – Justice. Here is a world resurrected before our eyes that has never known the critique of rights developed by legal realism, CLS, communitarianism, feminism, and postmodernism. The Charter appears as a means to develop a moral and ethical foundation for the Union. It draws on the twin sources of the Ideal and the Other. On the one hand, it refers us to the informing ideal of an ethos of collective societal responsibility for the welfare of the individual and of the community as a whole. On the other hand, the Charter refers to the Other, that which is excluded but nevertheless there, such as stories of injustice and fear, or the barbaric orient. However, both references are (aesthetically, at least) unconvincing. They remain wooden and simplistic in a saturated liberal society whose role model is the *Lebensästhet* (life aesthete).²⁰ One accepts them the same way one accepts Camper's claim that its shoes aren't shoes but the result of a dream.

VI

The creation of the Charter also speaks for my thesis that it is designed to create an atmosphere of quaintness. The European Council, meeting in Tampere in October 1999, decided to establish an ad hoc body, made up of 15 representatives of the heads of state and government, the President of the European Commission, 16 Members of the European parliament and 30 national Members of Parliament. On its first meeting, that body called itself “Convention” – a name that smacks of Philadelphia and Paris. The German version is even more telling than the English one. The body is called “*Konvent*” – a *Konvent*

²⁰ Johannes Goebel & Christoph Clermont, *Die Tugend der Orientierungslosigkeit*, Berlin: Volk und Welt, 3rd ed. 1998.

being “1. a) a community, esp. of nuns, bound by vows to a religious life under a superior; b) a gathering of protestant priests for further education; 2. a) a weekly gathering of the [active] members of a fraternity; b) collectivity of lecturers at a university; 3. (no pl., hist.) the convention during the French Revolution.” Atmospherically, this is not insignificant. It fits well with the name of the web site that documented the drafting process of the Charter: <http://db.consilium.eu.int>. “*Consilium*” is Latin, the former European *lingua franca*, and conjures up the image of a Roman council of wise old men, white-bearded and clad in togas. That image is linked to progress and modernity surging forward. “*Consilium*” is amended by “*eu.int*” – a cipher of globalization (“*int*”) à la Europe (“*eu*”) –, and it appears in the internet, the most progressive medium of communication with virtually unlimited possibilities. Such connection of Old and New, of tradition and modernity, of local roots and global aspirations, also shows in the Convention’s email address: fundamental.rights@consilium.eu.int. The old *lingua franca* appears in the same breath, the same address even, as the new *lingua franca*, the world language English.

Finally, the choice of the Convention’s President fits well into the picture, too. Roman Herzog is a former professor of constitutional law and Justice and President of Germany’s Federal Constitutional Court – thus standing for cool rationality, academic smartness, and legal expertise beyond doubt. He is also the former President of the Federal Republic of Germany – standing for political vision and statesman-like stature. Most importantly though, he was born in a small town in Bavaria (Landshut), was married, and has two sons. Despite his steep career, Herzog conveys the impression of somehow being native and rooted in the soil, sometimes even of that specifically Bavarian snugness.

All these phenomena serve an aesthetic purpose. That purpose is to soothe our deep-seated distrust of the smooth European machinery and its faceless bureaucracy. A “Convention” is neither a machinery nor a bureaucracy. Its members have a distinctive personal image. They listen to “us” (represented by pressure groups) and take into account our reservations and suggestions. Herr Herzog even talks like someone from Landshut: How can he not be one of us? The stroke of genius that shows in the idea of a Convention is that in spite of all the idyllic coziness, the Union’s twin attributes – rationality and expertise – are not weakened. On the contrary, they grow stronger because the drafting of the

Charter rests with a body of experts which bears the name of a gathering of university lecturers, of a community of monks or nuns, or of a political body during the French Revolution – in Latin still. It must seem to the Union’s architects that such a body will be able to scatter peoples’ doubts without giving up the tried and true Union standard of administrative expertise.

Under such conditions, *anything* becomes possible – even to talk Latin and Bavarian at the same time. We are familiar with such happy days because we have read the print on the Camper shoe box. Artisan roots and industrial vocation, local values and global horizons do not conflict; rather, they coexist and supplement each other. Things that seemed incompatible become compatible. There is nothing that cannot be achieved. Is it any wonder that the Convention method is brought up every single time a new text must be drafted and another Intergovernmental Conference needs to be prepared? It must seem like the golden bullet that is able to blast a hole in the Gordian knot which blocks communication between the Union and the citizens that it wants to be close to.

VII

There is much logical consistency in the Union’s deliberate use of the aesthetics of consumerism. Today’s citizens have turned, to a large degree, into consumers. Our personal salvation experiences are often founded upon consumption. “It is the consumer attitude which makes my life into my individual affair; and it is the consumer activity which makes me into the individual,” writes Zygmunt Bauman²¹, and John Urry maintains that “citizenship is more a matter of consumption than of political rights and duties.”²² Complaints about the shallowness of a “Saatchi & Saatchi Europe”²³ are, I believe, short-sighted because “today, we can learn more about the operations and values of social communication from Saatchi & Saatchi than from Holmes and Brandeis.”²⁴ There

²¹ Zygmunt Bauman, *Soil, Blood and Identity*, 40 *Sociological Review* 1992, at 205.

²² John Urry, *Consuming Places*, London/New York: Routledge, 1995, at 165.

²³ J.H.H. Weiler, *Bread and Circus: The State of the European Union*, 4 *Colum. J. Eur. L.* 223 (1998).

²⁴ Ronald K.L. Collins & David M. Skover, *The Death of Discourse*, Boulder, Colo.: Westview Press 1996, at 70.

is no reason, then, why Europe should not print the Charter's text on the wrapping of its product "European Union" in order to sell it.

The problem is that the Union actually believes that the Charter really is a step towards shared European identity.²⁵ That is as if Camper actually believed its shoes weren't shoes but the result of a dream. It simply is wrong to suppose that under the Charter's influence, the people living in Europe will turn into European subjects, coming together in solidarity as a European Community. We have already seen where such belief leads: to the comical attempt to make use of nation-state artifacts. Indeed, those artifacts, in the nation-state, *are* able to transport political and social meaning. The Union's texts, like the Charter, however, are not. It is true that subjectivity, in the times of globalization, has come under increasing pressure. When locality gets devalued, and geographical space is cancelled out, people begin to feel like objects of transnational interests. Fundamental rights, however, the nth catalogue at that, are no cure. The cure, as Bauman says, is playing the mobility game. Scope and speed of movement make all the difference between being in control and being controlled; between shaping the conditions of interaction and being shaped by them.²⁶ It seems that to participate in the competition that races along before our eyes is to reconstitute subjectivity. Perhaps, the perils of the market are met effectively only by the weapons of the market. Besides that, fundamental rights pale into near-insignificance and seem like anachronistic window-dressing, at least if injected into the rationality of money and the market.

But let's be honest. In times in which society itself seems like a fancy-dress party, with identities designed, tried on, worn for the evening and then traded in for the next, we actually like anachronistic window-dressing. That's why we're delighted about the Charter. "If there is kitsch in our daily lives," writes Daniel Harris, the theorist of consumerism, "it is because there is kitsch in our minds."²⁷

²⁵ Vertretung der Europäischen Kommission in der Bundesrepublik Deutschland (ed.), Europäische Gespräche Heft 2/1999: Eine europäische Charta der Grundrechte. Beitrag zur gemeinsamen Identität. Eine Dokumentation. Berlin 1999.

²⁶ Zygmunt Bauman, *In Search of Politics*. Stanford: Stanford UP 1999, at 26.

²⁷ Harris (supra note 2), S. xx.