

BOOK REVIEW

LE GÉNIE FRANÇAIS,* by Michel Guénaire, B. Grasset, 2006, and
TÉMOIGNAGE, by Nicolas Sarkozy, XO Publishing, 2006

Reviewed by Philip M. Marston**

Ideas are one of America's principal exports. When shipped as mathematical formulas or scientific jargon, or embedded in images contained in dubbed films, television shows or sporting events, they are largely independent of language. But most are packed for export in stout crates of English syntax that must be methodically disassembled—or at least parsed—by non-English speakers in order to extract the contents.

What happens, though, when the ideas are bound up in the packing crates—that is to say when the ideas can't be separated from the fabric of language, history, culture, and values within which they arose and through which they are carried? How well do such ideas succeed in foreign cultures without significant modification?

“Not very well,” is the conclusion one draws from Michel Guénaire's delightful little essay, *Le génie français* (Grasset 2006). A partner at Gide, Loyrette, Nouel in Paris, *Maître* Guénaire is known to the Energy Bar Association for his presentation on the European Union's (EU) liberalization and restructuring policies at the Association's meeting in December of 2003 (a brief account of which opens the chapter that addresses the U.S. role in the post September 11 world, discussed below). *Le génie français* is an intellectual's call for reform to address structural difficulties that stifle French innovation and creativity, in economic development to be sure, but also in the political and cultural arenas. At one level it is a plea for the continuing relevance of Latin models in a world increasingly dominated by Anglo-Saxon ideas, demography, and sheer economic clout. But it is also a call to arms in defense of a specifically French approach to the issues raised by globalization—which here refers largely to the centralization of power in Brussels as the capital of a federalizing Europe.

His analysis is intellectual and hardly partisan in any sense of the term—and yet may have implications for both American political parties as well as for U.S. relations with the EU (and indeed for intra-Union relations among the EU Member States), especially when one sees the extent to which many of his ideas are echoed in the recent book by Nicolas Sarkozy, the current presidential candidate, which is discussed below.

Guénaire begins by recognizing the triumph of the American model at the end of the Cold War with the dissolution of the Soviet empire: “[p]olitical liberalism was joined with economic liberalism, that crucible of the historic

* As a preliminary note, the quoted material throughout the report has been translated from French to English by the reviewer. Every attempt to verify the accuracy of the quotations has been made by the Energy Law Journal. Please direct any questions regarding the translation to the Book Review's author.

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Anglo-Saxon model, and triumphed over European statism. It alone guided men's minds and became the compass guiding the world."¹ But for *Maître Guénaire*, this period of unquestioned superiority of the American model for free minds (political liberalism) and free markets (economic liberalism) came to an abrupt end following the dual shocks of the September 11, 2001, attacks and the excesses exemplified by the Arthur Andersen accounting scandal, the California energy fiasco, recurrent black-outs of the power grid and—crowning blow—the collapse of Enron and the de-legitimization of the unbridled free market model for trade and commerce.

This is the context of his critique of the unqualified adoption in France of the “Anglo-Saxon” model for economic development. The term “Anglo-Saxon model” is a common one in France (especially after the Thatcher and Reagan periods) for an unrestricted (or more precisely, insufficiently restricted) marketplace that is viewed by the French as characteristic of the Anglophone world. The term is used to refer to such disparate ideas as private retirement accounts (e.g. IRA's or 401(k)'s), medical savings accounts—or the open-access, non-discriminatory transportation regime for natural gas or electricity.² The term is used here to refer principally to the economic and regulatory liberalization policies adopted by the European Union.

Indeed the independent regulatory agency is viewed as a distinctly “Anglo-Saxon” innovation. The first such “*autorité administrative indépendante*” was not established in France until the late 1970s and the second not until 1984. As noted by a recent government report reviewing the legal foundation for the independent agencies, since the French Constitution places the administration of the laws under the responsibility of the Government, it is a fundamental contradiction for an administrative agency to be “independent” of the Government that is itself constitutionally tasked with exercising governmental duties.³

Guénaire begins by tracing the roots of the French model in the high Middle Ages, when France became France during the formative period of western Christendom.⁴ The spiritual roots ensured “*solidarité*” through mutual support of countless medieval guilds and other organizations whose responsibilities went far beyond advancing the narrow economic self interest of their members.

The medieval Christian roots of the French heritage included an important element of the spiritual that survived the Renaissance, the Reformation, and even the *philosophes* of the Age of Reason (for whom such spirituality was anathema). For Guénaire, the French Revolution (with its rejection of this

1. MICHEL GUÉNAIRE, *LE GÉNIE FRANÇAIS* 13 (B. Grasset 2006) [hereinafter GUÉNAIRE].

2. Google has over 50,000 entries for “le modèle anglo-saxon,” including references to the “modèle anglo-saxon” for such disparate topics as economic development, organization of business schools, health care, Social Security/retirement planning, and many, many more.

3. To be sure, the same issue arises in American law under the guise of the “non-delegation doctrine”, revisited not long ago by the Supreme Court in *Whitman v. American Trucking Assns.*, 531 U.S. 457 (2001). An excellent overview of the French independent regulatory agencies was published in 2006 by a parliamentary office. See “Les autorités administratives indépendantes : évaluation d'un objet juridique non identifié”, Report from the Parliamentary Office for Evaluating Legislation, No. 404 (2005-2006) by M. Patrice GÉLARD (June 15, 2006), available at http://www.senat.fr/rap/r05-404-1/r05-404-1_mono.html.

4. GUÉNAIRE, *supra* note 1, at 30.

spiritual heritage) was inspired by *English* ideas that were foreign to the culture.⁵ Of Voltaire, Rousseau, Diderot and the other *philosophes* whose work prepared the Revolution, he writes that while they “could write in French, they thought in English.” These English ideas were those of John Locke, whose treatises lay the foundation for a radical individualism that tended to elevate individual rights over social responsibilities. For Guénaire, the last three centuries of globalization cannot be understood without an appreciation of this link to what he dubs the “Lockian demon” that lay the basis for three centuries of dominance of the “cold Enlightenment of free thought and individual conscience” from northern Europe that displaced the “warm Enlightenment of the Latin world that Italy, Spain and France had spread since the Renaissance.”⁶

Locke insists that there can be no innate ideas and that therefore man must be the sole master and judge of his own actions—thus setting the stage for modern western individualism in which natural law as articulated by the people’s representatives supplants the will of God.⁷ This “English spirit” and “English parliamentarianism” gradually dominated as the 18th century unfolded, helping lead to the American and the French revolutions. Echoes of this model are heard daily in American political discourse where “bringing democracy” to countries lacking a democratic tradition is a frequently cited policy objective.

Maître Guénaire is no reflexive defender of the “command and control” model for economic regulation. Indeed, he is thoroughly familiar with the open-access “liberalization” policies for energy, having been a draftsman of the French statute transposing the EU’s initial natural gas restructuring Directive into binding national law and having represented clients negotiating transactions under the new rules. He clearly admires much about the American system. The “melting pot” of immigrants—an image that has lost favor in much of American political discourse over the last 20 years—is taken as a reality. He views it, along with America’s vibrant religious beliefs and respect for hard work, as a source of much of the nation’s strength and dynamism. He points to the Voting Rights Act of 1965, the Fair Housing Act of 1968, and the principle of affirmative action as important steps in integrating minorities into the mainstream culture. Citing de Tocqueville, he views Catholicism and Protestantism as two complementary religious trends, with Catholicism stressing equality and Protestantism placing more emphasis on individual responsibility and independence.

For Guénaire, the vibrancy of American religious life lies at the heart of the “enigma” of American society.

Religion nourishes the formidable belief of Americans in their messianic role—something that troubles their partners (and in particular the Europeans) who do not understand the religious point of reference of America’s leaders.... The cultural dynamism of the American nation will overcome its structural problems for many years to come. It is the basic mindset of the American people, straightforward and practical, that is the mainspring of the economy, not just the leadership of a business elite. When you work in the United States, you encounter an appreciation of the virtue of work that has disappeared in Europe. Work is an economic virtue,

5. *Id.* at 33.

6. GUÉNAIRE, *supra* note 1, at 34.

7. *Id.* at 55.

but a democratic virtue as well. As long as the United States has true entrepreneurs who put their own shoulders to the wheel to give an opportunity to the men and women who wish to work with them, the American nation will maintain its strength. It is the American capitalists, whose faith is on the scale of their country, who will write the future of American capitalism.⁸

His critique of the unqualified application of the Anglo-Saxon model in France is all the more telling for this perspective.

It is this “de-spiritualization” of the culture that lies at the root of much of the current malaise in France—and that so sharply distinguishes much of contemporary Europe from the United States. The French elites visiting or working in Washington are often astonished by the sheer scope and energy of American religious life, for which they have largely lost a common reference. It is quite inconceivable to imagine the President of the French Republic ending a televised speech with the French equivalent of “Good night, and may God bless America.”

Another factor the author plainly admires in contemporary America is the willingness to use the power of the national government to advance national interest, something that he believes has been lost in the increasingly amorphous amalgam that is the European Union. The shock of the September 11, 2001 attacks galvanized the U.S. to step away from the prevailing globalization model and to resume the role of a nation-state defending its national interests—a role that is in the “pure tradition of the French classical age.” He views the U.S. as opting for a model where political leadership can be effectively deployed in the national interest, whereas the political leadership of France has been increasingly bound by the legal and regulatory restraints imposed by the EU, a situation exacerbated by the EU’s liberalization policies that further restrain the national governments’ ability to address economic issues.

One of the potent “Anglo-Saxon” ideas exported over the last twenty years is the open-access, competitive paradigm for network industries. The approach was originally applied in the U.S. telecommunications industry in the early 1980s and subsequently to natural gas and electricity transmission through the various rulemaking orders so familiar to energy law practitioners. The fact that this model was elaborated in English made it unsurprising that it was exported first to the United Kingdom in the latter half of the 1980s with considerable assistance of U.S. companies including Hadson Corporation, whose UK venture petitioned for one of (if not the) first orders from the new British regulator directing the offering of open access, non-discriminatory gas transportation service and subsequently became one of the first competitive energy suppliers in Europe.⁹

Yet the model led to the collapse of Enron, the loss of billions of dollars and thousands of jobs and threatened the financial viability of California—the seventh largest economy in the world, if considered separately. Guénaire describes his astonishment when, while speaking at a Moscow conference on

8. GUÉNAIRE, *supra* note 1, at 84-85.

9. See, e.g., UNITED KINGDOM COMPETITION COMM’N, GAS: A REPORT ON THE MATTER OF THE EXISTENCE OR POSSIBLE EXISTENCE OF A MONOPOLY SITUATION IN RELATION TO THE SUPPLY IN GREAT BRITAIN OF GAS THROUGH PIPES TO PERSONS OTHER THAN TARIFF CUSTOMERS (1988) (see especially Chapter 6 “The views of the parties” at 62-63 ¶¶ 6.88, 6.92).

natural gas and electricity restructuring in late 2004, he found himself the only European speaker amid Americans who hammered home their prescription for a near total deregulation of the Russian energy sector before an audience of incredulous government and industry attendees—while yet failing to mention the problems that the prescription had created in their own country.

He views the dominance of the Anglo-Saxon model as having created the paradoxical state of affairs where international commercial interests have escaped control by national governments. This in turn has produced the “crisis of legitimacy” for self-government because the populations have come to see that the government—regardless of its policy preferences—has become powerless. Just as the government of California was powerless in the face of Enron, so the government of France has become increasingly powerless to address other too-obvious problems of chronic unemployment, stagnant growth, and failure of initiative and innovation.

The proliferation of the independent regulatory agencies—another aspect of the “Anglo-Saxon model”—has itself exacerbated the problem in Guénaire’s eyes, by fragmenting governmental power and responsibility. The regulatory agencies follow and react to market changes, losing the essential governmental ability to lead and to prepare for the future. Modern capitalism has captured the modern mind through its undeniable successes, but because of its narrow focus on individual enterprise and short-term goals, is unable to advance the broader public good and is vulnerable to abuses. The public sector and the concern for public service withers while the private sector becomes prone to scandals such as those that enveloped Enron and Arthur Andersen, despite the regulatory apparatus that was designed to prevent them.

Guénaire views this process as a natural unfolding of the Lockian model’s denial of innate ideas and innate truths and its focus on the sovereignty of the individual. For *Maitre* Guénaire, the deregulatory and privatization thrust of current “liberalization” policies is thus a logical extension of 17th and 18th century liberal thought now being imposed on France through the constant flow of directives and decisions from the European Union for which the solution to every problem tends to be less government regulation, greater liberalization, and the creation of another specialized regulatory agency to oversee matters.

Indeed, the very principles of free circulation of goods, peoples, capital, and services tend to turn the entire public sector itself into an obstacle to be removed as an impermissible governmental preference. And with each additional step towards privatization and deregulation along the lines of the Anglo-Saxon model, there is an increased focus on the individual enterprise and its narrow interest and a diminution in the ability of the public sector to serve the public interest.

In effect, Anglo-Saxon liberalization means the end of the Government’s ability to be an economic actor and to use its economic role to advance its chosen public policies, which must instead be met, if at all, by private enterprises.

For Michel Guénaire, the root of the problem is that the only remedy proposed for modernizing France is a foreign model that is ill-suited for the patient. He does not argue for France to set itself up in opposition to the U.S. (which has often been the reaction of recent French governments), but rather to

understand that the U.S. is merely defending its own national interests as it sees them—precisely a role historically played by France. He calls for France to return to that historical role rather than abandon it to an amorphous European Union: “France cannot respond to the new American power except by rediscovering the capacity to defend its interests in the world.”¹⁰

His prescription begins with the need to rediscover the value of work. The famous (or infamous) law requiring the thirty-five-hour week was justified at the time of enactment as a way of lowering unemployment by sharing the available work. It has become not merely an obstacle in itself but has tended to enshrine a certain disrespect for hard work that is contrary to the traditional French attitude. He calls also for a debate on the renaissance of public services and the proper role of the public and private sectors in defining and providing such services—and for the World Trade Organization to accept the role of national governments in these areas.

He calls, too, for major changes in what he terms the “unbelievable” European Union governmental mechanism where he sees a disconnect between an *economic organization* that is more and more integrated and a *political structure* that is more and more enfeebled. With regard to the continued expansion of the EU membership, he says pungently that the EU doesn’t know where its expansion will stop because it no longer knows where it is going in the first place. With a style that captures the thought perfectly but is sure to rankle many in the new EU Member States, he distinguishes between those States that “have their own history” and those that are “most often but severed pieces of the old continental empires.”¹¹ The European Union political weighting must accept that the role of each Member State simply cannot be equal:

Either Europe is built as a political organization that dissolves the member States, or she must make a place for those States that are stronger thanks to her. Either she remains the rulemaking yoke that she has become, or recovers the role of a virtuous circle of friends that she should never have lost.¹²

France, he believes, should call for inverting the priorities between the European Union and the Member States, setting the EU’s institutions and offices to work aiding the Member States and not vice versa.

He faults the French government’s policy at the time of the Iraq war as simply opposing the United States at the United Nations, instead of searching actively for a real diplomatic solution that might have avoided the war. The reader notes a somewhat bemused tone in the discussion of the inversion of roles between the U.S. and Europe after the September 11 attacks, with the U.S. insisting on its right to protect its essential national interests regardless of the views of others—much as did England, France, and Italy at the end of the First World War—while those same Europeans adopted the kind of idealistic moral tone used by Woodrow Wilson during the Versailles Treaty negotiations and so frequently employed since.

At bottom, Guénaire concludes that in building the European Union, the construction of the economic system was divorced from the construction of a

10. GUÉNAIRE, *supra* note 1, at 20.

11. *Id.* at 143.

12. GUÉNAIRE, *supra* note 1, at 147.

corresponding political system, such that Europe has ceased to exist as a political power and lacks the means to defend its political interests in a dangerous world. “Multilateralism,” he writes, “is not the best response to a chaotic world.”¹³ For Guénaire, the idealism of today’s advocates of that policy is a sign that its time is nearly over and that the clear vision of the United States in protecting its own interests is the sign of a new era rising in which *bilateral* relations will once again predominate. This, he suggest, is a world in which France may be able to return to a model that reflects its own underlying values, thoughts, and history.

As part of that change, Guénaire sees a need to change the ideas that the French have about themselves, restoring a sense of pride, of accomplishment and, indeed of patriotism. “France was once a power,” he writes, “and undoubtedly will never be one again; France was once a model, and ought now become one anew.”¹⁴ But he reserves his harshest critique for what he views as the failure of French business, political, and cultural leaders:

[f]or many years, the French elites have considered themselves outside the rest of the society, seeking for themselves titles and privileges They have also betrayed the French model, as demonstrated by the crisis of French society. Today, they are pulling the country down by their pessimism and their exaggerated denunciations of the French model. We must turn our backs on them To whom shall trust be given? To those among us, men and women, who will find a way to draw their legitimacy from their training, their talents, their work and effort, and who will sustain it by their courage, their faith, and their deeds.¹⁵

In effect, Michel Guénaire calls for the French to stop trying to be English and stop trying to simply copy Anglo-Saxon ideas and models that are as out-of-place in France as beans on toast, concluding: “[t]he French will stay French as long as the English remain English The historical analysis of globalization must always respect national character. This is why cultures are eternal while civilizations are mortal.”¹⁶

Many of the themes in *Le génie français* are echoed by Nicolas Sarkozy in his best-selling book *Témoignage*, which was published in French later in 2006 (the English edition of which is due for publication in the United States in March of 2007). *Maître* Sarkozy (for he has also been a practicing attorney) is a leading political figure and current presidential candidate for the May 2007 elections. He is somewhat controversial in France due to his combative and energetic style that seems at times an eclectic mix of Margaret Thatcher and Charles De Gaulle, with a good helping of former New York mayors Ed Koch and Rudi Giuliani, and more than a hint of Ronald Reagan’s great optimism and unabashed love of country. He is an outsider to the traditional French establishment as his father and maternal grandfather were both immigrants. His Hungarian father’s family fled the advancing Soviet army during World War II and eventually ended up in France. His mother was French, but her father was a Greek immigrant who had converted from Judaism to Roman Catholicism. Also unusual for a French political leader, he is not the product of the elite “*Ecole Nationale d’Administration*” or any of the other “*Grandes Ecoles*”.

13. *Id.* at 165.

14. GUÉNAIRE, *supra* note 1, at 25.

15. *Id.* at 179.

16. GUÉNAIRE, *supra* note 1, at 181.

The English translation of his book, due out in 2007, will include a subtitle: “*Testimony: France in the Twenty-first Century*.” The work is part autobiography, part political manifesto, and part pep-talk. He strikes many of the same themes as Michel Guénaire:

[t]he French wish to be French and cannot be other than French. Reproducing a foreign model makes no sense and has no chance of succeeding. France must reach into its deep roots for the energy to succeed, not in some pale imitation of models brought in from elsewhere. . . . France is not some nostalgia but can become again an example.¹⁷

Similarly, he calls for major changes in the country’s relations with the European Union intended to restore national governing powers. Tellingly, the European Union is not even mentioned for the first fifty pages or so, and then is introduced rather dismissively as just one more constraint that must be managed.

Sarkozy gives the reader a sense of the charismatic (his detractors would say demagogic) role he sees for himself. “Politics is meaningless for me,” he writes, “unless it takes as its goal giving hope to millions of people.”¹⁸ The same tone is evident later on when he says that the politician’s “primary mission” is to give new hope by demonstrating that it is possible to affect the course of events.¹⁹

It is clear that while Sarkozy is no socialist, he would be willing—even eager—as President to take an activist stance on many economic issues. Having read Michel Guénaire’s more academic work on the traditional role of the French state in intervening in the economy, it is easier to understand how a Sarkozy Administration might approach such economic regulatory issues. In *Témoignage*, Sarkozy goes into considerable detail to explain and support such efforts as the protection of a major retail chain from possible acquisition by Wal-Mart, the forced reduction of consumer prices through jaw-boning retail executives when he was Interior Minister (even though he concededly lacked the legal authority to compel the price rollback), and the government-backed rescue of the major manufacturer, Alstom S.A. in 2004.

Like Guénaire, Sarkozy both admires and criticizes the U.S. model. What he admires is the social mobility, the culture of opportunity, the dynamism, and willingness to accept people on their own merits. In the U.S., “one is not judged immediately by the way that you say good morning or the sound of your name.”²⁰ But he is hardly an admirer of the system of social protection which he finds inadequate and unequal: “I find it unacceptable for one to be less well treated, or not treated at all, because one is poor, or that one must live in a permanent fear of falling ill because of a lack of health insurance.”²¹

Affirmative action—or more literally translated, “positive discrimination”—is a topic that has created controversy for Sarkozy. In the French system, it has not been viewed as an acceptable option in the past because it violates one of the founding principles of the Republic, “*l’égalité*.”

17. NICOLAS SARKOZY, *TÉMOIGNAGE* 66-67 (XO 2006) [hereinafter SARKOZY].

18. *Id.* at 10.

19. SARKOZY, *supra* note 17, at 54.

20. *Id.* at 62.

21. SARKOZY, *supra* note 17, at 62-63.

The positive side of this coin has been that, at least within a certain socio-economic milieu, France has traditionally been less troubled by racial discrimination than the U.S. With the great influx of African immigrants over the last couple of decades, however, that has changed and France has had considerable difficulty integrating these new immigrants, and especially the Muslim immigrants from mostly francophone North Africa, into mainstream French society. This inability to integrate the newcomers and their French-born children has become increasingly obvious, as most plainly shown by the riots in 2005 and the sporadic recurrences since then in which bands of hooded men have fire-bombed buses in order to draw the police into violent confrontations, leading some police leaders last year to declare that France now has its own “*intifada*.”

Sarkozy proposes to take a far more active approach to integrating France’s new minorities. Here, he points favorably to the American experience and lists the various government and business leaders who come from minority communities. But he points, too, to France’s own past, when the Edict of Nantes in 1598 created a set of civil rights and privileges for Protestants—including special courts with Protestant judges and the right to a specific number of fortified cities—all designed to protect the rights of the nation’s Protestant minority. The Edict of Nantes ended some forty years of warfare and brought civil peace for nearly a century. In effect, Sarkozy is saying (as does Michel Guénaire) that France must look to its own history and culture for examples and models for solving today’s problems.

Here, it is important to understand the difference between what makes a Frenchman compared to what makes an American, because the path to integration into the mainstream in each culture must be adapted to reflect the values of that mainstream culture. In Sarkozy’s view, the “cement of our unity” that holds the French Republic together notwithstanding the great differences between a Breton, an Alsatian or an inhabitant of Marseille, is “the love of our history, of our culture, of our language.”²² While few in France might disagree with that, what follows is far more controversial:

[t]o be French is not a question of birth. It is a question of finding oneself in the culture and in the history of this nation with its incomparable destiny. It is precisely for that reason that those who do not love France are not obligated to stay there.²³

This “love it or leave it” approach wins plaudits from some and jeers from others (including accusations that it is intended as a racist comment aimed at black African immigrants). What come through to the outside observer, however, is the passion and personal conviction of the speaker, whose blunt, sharp tongue is the sign of an impatient man who is sure of his path and hasn’t the time for nuance or mincing his words.

Nowhere is this clearer than in his use of the word “*rupture*”, which perhaps is best rendered here by the English phrase “a clean break.” Much of his final chapter is focused on calling for a “clean break” with a host of traditional policies that have been supported (or at least implemented) by French

22. *Id.* at 186.

23. SARKOZY, *supra* note 17, at 186-187.

governments of both left and right over the last thirty years. His choice of the term “*rupture*” in speeches was criticized as implying too radical a change. But he repeats the term over and over in *Témoignage*: he seeks “a clean break” with the climate of negativism and despair; with the “lies” that it is more just to collectively share inexistent wealth than to help each other to *create* wealth, or that the high level of French public debt is not in fact a serious problem. He calls for “a clean break” with the inability of the government to adopt needed economic or tax policy reforms, or to reform the educational system. He uses the same term in calling for a break with present refusal to recognize the need to take positive and affirmative steps to favor the integration of the minority communities into the French mainstream through some variant form of affirmative action.

While the book touches a host of other governmental policies, there are two areas of particular interest for Americans for which Sarkozy also calls for “a clean break” from the past; the need for “liberalization” of the economy, and for a change in foreign policy (particularly vis-à-vis the United States).

With regard to liberalization of the economy, Sarkozy seeks to reframe the debate. While he plainly is calling for considerable reform to encourage business formation and innovation, he is careful to stress that while he is a “*libéral*”, he is not an “*ultra-libéral*” and favors maintenance of economic regulation to preserve the minimum wage, labor laws. He argues that certain sectors of the economy, such as culture and sport, require special treatment, as does the maintenance of various public services which the competitive market provides poorly or not at all. He specifically defends the importance of State intervention in key industries (as was done in the Alstom rescue plan) in appropriate situations, an approach that might be viewed by an American free-market advocate as unjustified protectionism, old-fashioned Gaullist *dirigisme*, or perhaps merely a concession to practical political necessity.

Of particular note, he calls for the Finance Ministers of the Eurozone States to have regular communications with the head of the European Central Bank (ECB) in order to develop a joint monetary policy, with both sides respecting the “roles and prerogatives” of the other. This plank in his platform appears to indicate a desire to bring the central European bank under more explicit national political oversight. Given the tensions within the Eurozone (where differing economic circumstances mean that a single monetary and interest-rate policy tends to make any interest rate policy simultaneously “too high” for some and “too low” for others), an avowed policy of insisting on greater political responsiveness of the central bankers is likely to be fraught with conflict.

Monetary policy may present the greatest difficulty that Sarkozy will face if he is elected, for a common monetary zone does not allow for interest rates to be raised or lowered by differing amounts in different regions depending on inflation-control or stimulation objectives sought by each such region. Rather, the central bankers must strive for a monetary policy that is a “best fit” across quite different economic regions. The theoreticians’ solution to that problem is to ensure that capital, labor, and services may move freely among the regions as economy opportunities evolve or contract—exactly as occurs in the U.S. But that solution works only where people will get up and move in response to those changes—and therein lies the rub. Despite much greater mobility than even

thirty years ago, Europeans are far more disinclined than Americans to move to another city in search of a new job or business opportunity—much less to another region within their own country and still less to another country. Thus while the son of a Breton fishmonger may now become a baker in Milan or a Norman engineer may leave home to work in the Ruhr, these are still exceptions to the rule. Language and culture are again the sticking point. The Latin countries are culturally and linguistically closer to the French than the Nordics or the British.

Hence the very existence of a single monetary area *necessarily presupposes* the liberalization of market rules that would otherwise discourage the free movement of capital, labor, and services. This is a far more complex process than merely “harmonizing” tax and regulatory policy and will require an unceasing stream of European Union Directives, White Books (proposals of action in a particular field of the common policy), Green Books (practical proposals for action in a particular sector), and decisions of the European Court of Justice. The sum total of this effort will *inevitably* conflict more and more with national legislation and national *mores*. While the EU regulators and order-writers may perhaps make a greater effort to respect the priorities and preferences of local governments in the name of the “subsidiarity” principle,²⁴ it is difficult to see how they can back away very far from the liberalization project without compromising the integrity of the common monetary zone. It is equally difficult to see how the central bank can follow a coherent interest rate and monetary policy without presupposing the success of the ongoing liberalization project.

In sum, the problem is that the formal *institutional, economic, and monetary* integration of the European Union has proceeded far beyond the *political* integration of its peoples. The widening gap between the two is hence a recipe for dissatisfaction, tension, and conflict for years to come, as was manifested in the rejection of the proposed European Union Constitution by voters in France and the Netherlands in May and June of 2005.²⁵ It is still unclear how that political disconnect will be bridged. Both Michel Guénaire and Nicolas Sarkozy are well aware of the problem and both call in effect for a slowing of the EU integration project in order to better respect the political and cultural realities.

24. “Subsidiarity” has been defined as the principle that matters ought to be handled by the smallest (or, the lowest) competent authority. From its roots in Catholic social teaching in the 19th century, the principle had informed EU jurisprudence for some years before being formally included in the Maastricht Treaty in 1992. See Treaty On European Union art. 3(b), July 29, 1992, 92/C 191/01, available at <http://eur-lex.europa.eu/en/treaties/dat/11992M/htm/11992M.html>.

25. The proposed Constitution was not a constitution at all in the American sense of the word, but rather a recompilation of hundreds and hundreds of pages of treaties with annexes and protocols comprising the complex deals that had been built up since 1958. A copy was mailed to every French voter—roughly equivalent to a small volume of the Federal Register, but in smaller print and on thinner paper. Perhaps even worse from a marketing perspective was the Preamble. Americans can quote the opening lines of our Constitution without even knowing the source of that majestic, simple claim that it is “we, the people of the United States” who have acted to promulgate that document. With an extraordinarily unfortunate formalism that betrayed drafting by legal technocrats rather than statesmen, the European Constitution began with the memorable phrase, “His Majesty the King of the Belgians” and continued on through a lengthy paragraph listing the formal title of each of the heads of state of the EU members. As Captain Aubrey of Patrick O’Brian’s Aubrey-Maturin novels might say, “marketing ain’t in it.”

With regard to French foreign policy towards the United States, Sarkozy makes it clear that he seeks to improve relations. His positive remarks about the U.S. in the past have earned him the nickname “*Sarko, the American*” (which of course is not intended by his critics to be taken as a compliment). Sarkozy responds with characteristic bluntness to such critics among the French elites who, he says, make a habit of detesting America, or at least of criticizing regularly it. After all, he notes that the U.S. is:

a nation with which we have never gone to war, which is not all that common; which came to help us, to defend us, to liberate us on two occasions in our recent history; with which we share a system of democratic values that are extremely close; of which our children dream of knowing their lifestyle and sharing their interests. In addition, it is the greatest economic, monetary and military power in the world. We share the use of the same ocean. One need not be a great international strategist to understand that it is in our interest to have excellent relations with this country.²⁶

He laments that relations are “chilly” if not outright cold following the U.S. decision to go to war with Iraq.²⁷ He does not excuse the responsibility that the U.S. may bear in the matter (including in particular the American tendency to see the world in black and white, or to fail too frequently to appreciate that just because other cultures may be different does not make them wrong). But he emphasizes that placing itself in opposition to the United States was a two-fold strategic error for France. It was an error first of all simply because it is a bad strategy to ignore or to criticize your friends. But more tactically, he notes that the policy of opposition was an error because one is far freer to express disagreement when one isn’t questioning the underlying shared interests.

In this context and referring explicitly to the decision to go to war with Iraq, he effectively states that France’s threatening to veto a Security Council resolution approving the invasion was an error.²⁸

This is a capital point. The Security Council veto was created at the origin of the United Nations to recognize in the international *political* forum the *fundamental economic and military power* of the nations without whose agreement no resolution of the Council could be effective in any event. Hence, the veto would normally be used in matters of fundamentally important national interest. In 2003, there was no disagreement among Western nations over the Saddam government’s possession of weapons of mass destruction, and in particular biological and chemical weapons. At the time, the United States was still responding to the anthrax attacks that had demonstrated how pitifully easy it would be for a terror-sponsor State such as Iraq to wreck havoc on the U.S. economy while avoiding responsibility. From the U.S. perspective the existence of a terror-sponsor State with a known track record of weaponizing anthrax was simply unacceptable.

As a result, one might readily conclude that from the U.S. perspective it really didn’t matter whether Iraq was involved in any way in the 2001 anthrax

26. SARKOZY, *supra* note 17, at 262.

27. *Id.*

28. Sarkozy is unusually *nuancé* here, stressing that while French disagreements with US policy on Iraq were legitimate, “they would have been heard more clearly” had they not been coupled with the veto threat. SARKOZY, *supra* note 17, at 263.

attacks: following such a plain demonstration of the power of a few envelopes to disrupt the economy (and indeed the workings of the Congress), the U.S. could not easily tolerate the existence of a hostile regime that maintained such a weapons program whether or not there were current stocks of such weapons.

France did not dispute the prior existence of the Iraqi biological and chemicals weapons programs nor the ability of the Saddam regime to have produced anthrax of the kind used in the 2001 attacks, and hence did not fundamentally disagree with this aspect of the threat posed by the Iraqi regime. Nevertheless, the French government determined to wield its Security Council veto threat to preclude UN support or approval for the invasion. From the U.S. perspective, this was virtually a statement that it was in the fundamental national interest of France for the United States to be kept subjected to the threat of potential anthrax or similar attacks from terror-sponsor States. This was an appalling proposition from a traditional ally and perilously close to a declaration of overt hostility.²⁹

France's UN veto strategy in 2003 was thus either a diplomatic blunder by an administration that failed to appreciate how its policy might be perceived, or it was a well-considered and deliberate policy intended to mark a fundamental turning point in Franco-American relations. It is reassuring to see that Sarkozy apparently views it as the former.

Whether or not Nicolas Sarkozy succeeds in his quest for the French presidency in May of 2007, it is clear from both his and Michel Guénaire's books that there is a desire for a new direction in French policy vis-à-vis both Brussels and Washington. A new bilateralism may be more visible over the next few years with less talk of a European foreign policy and more direct action by individual European governments. The continued export of American ideas—including in particular both the regulatory model for administrative law in general and the open-access restructuring of the energy industries—is likely to continue.

Ironically, however, the U.S. is already beginning to import European models for carbon regulation and for the sophisticated packaging and trading of emissions offsets currently dominated by European trading platforms (some of which are affiliated with U.S.-based exchange platforms) and major investment houses. Indeed the merger between the New York Stock Exchange (NYSE) and Euronext SA is likely to accelerate the convergence of North American and European markets for trading securities, futures, and derivatives as well as carbon offsets. The Model Rule of the Northeast Regional Greenhouse Gas Initiative (RGGI),³⁰ adopted by the RGGI-state Governors in August of 2006,³¹

29. Under these circumstances the deployment of the French aircraft carrier, the *Charles de Gaulle*, in the days before the U.S. invasion of Iraq took on an unprecedented character. Since France had threatened to use its veto to prevent the U.S. from going to war—a veto power granted to protect fundamental national interests—the deployment of a nuclear carrier force to the region just as hostilities were about to commence could not have been intended to *assist* in the offensive. Yet if the deployment could not serve to support or assist the U.S. invasion, then it could only operate to complicate or tend to obstruct the U.S. military operations. At the very least, it risked being viewed in that light.

30. Regional Greenhouse Gas Initiative, <http://www.rggi.org>.

31. Regional Greenhouse Gas Initiative, Model Rule and Amended Memorandum of Understanding, <http://www.rggi.org/modelrule.htm>.

draws on the “cap and trade” carbon regulation scheme already in place under the European Unions Emissions Trading System and proposes certain forms of direct linkage where emissions offsets that are acquired in Europe may be in effect “imported” and applied to satisfy RGGI-imposed CO₂ emissions caps. European banks, traders, and consultants are already looking to export their carbon regulation and trading expertise to the United States.³² And of course, as the clearing function of trading exchanges becomes increasingly “unbundled”, we may expect to see more energy commodity transactions settled through overseas clearinghouses.

In short, the convergence of ideas and a closer linkage for energy and energy-related markets between the U.S. and Europe appears likely to continue for some years to come, perhaps fulfilling at least in part the wishes of Messrs. Guénaire and Sarkozy for greater innovation and reform—and for better relations between France and the United States.

32. An initial conference organized by the European consultancy Point Carbon in Washington DC in January of 2007 was sold out with some 600 participants. Point Carbon, <http://www.pointcarbon.com/>.