

Comments on the topic

“COMMUNITY INSTITUTIONS: HOW CAN THEY COPE WITH A UNION OF 27 MEMBERS?”*

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Given the timing of this conference, it is impossible to approach the topic without evoking the spectre of the recently failed referenda on the Constitutional Treaty in France and Netherlands. Does this affect the programmed accession of Romania and Bulgaria, hence the number of eventual Member States? Does it make the already enlarged Union non-governable? These are just some of the questions which immediately come to mind.

Impact on Romania's accession. The Romanian government has recently issued a public statement of re-assurance towards its citizens, explaining that the non-ratification of the Constitutional Treaty bears no consequence for the implementation of the Accession Treaty, since the latter had purposely been drafted in two versions (i.e., catering for any outcome of the Constitutional Treaty ratification). Yet, I read that at least one MEP (Mrs. Doris Pack) has called this interpretation “stupid”. I confess having difficulties understanding how is it possible that an interpretation in good faith of the provisions of signed international treaties can be called “stupid”. But then, again I seem to be generally having difficulties more in understanding the European Parliament's *modus operandi* and, more fundamentally, its sheer *raison d'être*.

It may be, however, that what the distinguished MEP meant is that the

rejection of the European Constitution is indicative of a more general change of mood which turns against Romania. I wonder, then, how can one identify so precisely what prompted the “No” votes? This is not exact science and, moreover, we have absolutely no temporal perspective at this point in time.

If we confine ourselves to facts, then:

- a) the Accession Treaty is in no way conditioned by the fate of the Constitutional Treaty;
- b) the Nice Treaty had already made the indispensable institutional adjustments allowing for enlargement;
- c) there is nothing really dramatic in substance that the Constitutional Treaty brings as novelty to begin with.

Which brings me to the next question, namely **“why was the Constitution deemed necessary?”**. Here, again, views expressed are not fully convergent, but most of them refer to the need to palliate to the much-decried “democratic deficit”. Just like “globalization”, this is yet another over-used and under-specified concept. I do not see how sovereign states with democratic systems exercising their prerogatives as subjects of international public law and fulfilling their own national legal procedures for transposing into domestic law the commitments undertaken internationally

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can dent democracy so much as to trigger a shortage of it. And I find that this theory is very similar to those vilifying the WTO as the source of all evils, simply because states have committed under its aegis to do / not do certain things. After all, the very essence of international treaties is to limit the discretion that states can exercise in their conduct. This has served human kind well for millennia. What is so special about the new one?

Hence, I do not see the “democratic deficit” as a problem. That is, only as long as we keep European integration in the realm of inter-governmentalism. Once, however, this concept is assigned more “unionist” (“federalist”) features, things change. Yet, in such a case, it is the appropriateness of the “federal” path which should have been debated and, eventually, dealt with by the Convention.

Besides, even assuming that the “democratic deficit” indeed is a problem, I do not see how this was supposed to be solved by the Constitutional Treaty. The increased powers of the European Parliament are not dramatic. Even more importantly, they cannot not be the answer:

a) because the European Parliament is (and seems to remain for a long while from now on) a minor league as compared to the national political arena, hence it tends to be the locus of second-rank politicians (top ones playing in national competitions, where there is a prize to win: power)

b) because there is nothing to back the assumption that MEPs are particularly representative of their people, in a manner that governments (who “play” in the Council) are not. European elections are most often used by the electorate as a means

to pass signals to the national politicians in relation with domestic issues. Also, the recent debates during the referendum campaigns (especially in France) have shown numerous episodes of MEPs holding views completely at odds with the prevalent perceptions of their constituencies¹.

At the end of the day, it seems that the only tangible step towards tackling the “democratic deficit” consisted in the super-elaborate mimicking of a bottom-up approach by the Convention, which purported to give a say to the grass-roots by using a “top-down hand-picking” system for identifying their spokespersons. Yet, the EU Constitution is more “esoteric” than any national constitution (being both more technical and more philosophical) and this makes it even less amenable to genuine public debate. This should have been taken as a sunk cost. Instead, a convoluted play was staged, in an attempt to leave the impression of genuine grass rootism. In fact, the EU Constitution is, categorically and unmistakably, still the construction of an elite. I see no problem with this and I even think it is unavoidable. But, I certainly see no need for dressing it up as “democracy in action”.

When it came to approving the outcome of this exercise by referenda, many people voted “against” for lots of different (and even opposed) reasons: lack of reference to Christian roots; enlargement, i.e. lack of reference to EU borders rather than fear of Romania/ Bulgaria in particular; too liberal approach; instrument bearing the “anathema” of globalization; imposition from above by an elite; protest against own government; no proper campaign for yes.² Summing up, we have:

¹ Most visible case in point: Daniel Cohn-Bendit, vocal and acerbic supporter of the “Yes”, although his CV is perfectly compatible with the groups who have massively voted “No” (greens, leftists).

² As the Belgian Minister of Foreign Affairs has so delicately diagnosed the case of neighbouring Holland's referendum.

- on the one hand, divergent views as to what EU's physiognomy should be, which arise from identifiable interests;

- on the other hand, differences which are completely unexplainable, and yet are very strong.

All this leads me to believe that the time has not come yet for this project. The counter-argument, namely the perpetual need (identified by Jacques Delors) for a grand chantier, is not persuasive. At the end of the day this is just another version of the "bicycle theory" so familiar to trade policy scholars. This concept presupposes that, left to themselves, people will naturally lean into the opposite direction (i.e., disintegration), hence the need to constantly keep them busy. But, if this is the case, we do not really have a constituency for an "ever closer union" and trying to extract one would be the direct contradiction of democratic principles.

As already hinted, I do not think the Constitutional Treaty makes any big inroads into simplifying the decision-making mechanism within the EU, although this is widely regarded as the most vulnerable point after enlargement. It is, of course, easier all other things being equal to take decisions among few than among many. But, then, based on this criterion, there should not have been any integration at all. The reason for which integration exists and becomes more and more prevalent is that it brings economic benefits and, according to Richard Baldwin's domino theory of regionalism, these benefits are increasing with the size of the grouping.

There are other ways, apart from reforming the institutional setting of the EU, for lessening the burden of decision-making:

opting for regulatory competition over regulatory harmonization. This would bring to the fore the issue of values: many (perhaps even a majority in some countries) will say that unfettered competition means destroying the environment, exploiting labor, alienating the human race etc. Hence, the need for minimum standards.³

Does one really need commonality of values in order to engage in international transactions? This has seldom been an issue as long as international transactions concerned mainly goods and it surfaced as a priority only recently and in ways which do not preclude the existence of protectionist intents. Furthermore, seldom anybody cares for commonality of values as far as capital movements are concerned or as far as the so-called "modes" I (cross-border supply), II (consumption abroad) or III (commercial presence in the territory of another country) of international trade in services are concerned. This becomes a big issue only when we talk "services mode IV" (presence of natural persons the "Polish plumber in France" syndrome) and free movement of persons. Coincidentally or not, these happen to be precisely those areas where poorer countries stand to gain more, at least from a static perspective. Is this sheer coincidence?⁴

Coming back to the issue of decision-making among many members: there are no big complications if one takes the "competitive" venue. But the competitive venue seems to be the less palatable to the "standard setters" the more "poor" members you have. Hence, the problems created by enlargement to decision-making are not so much numerical (number of members), but linked to the widely diverging prosperity

³ It is ironical that, in these areas, the most vocal "Europeanists" are advocating uniformization, yet they are staunch defenders of diversity in other respects: religion, culture ("shun Hollywood"), sexual orientation etc.

⁴ If we go into the dynamic scenario, we may start worrying about "brain drain" and the like.

levels between “old” and “new” Member States. But, then, if newcomers are expected to abide by strict standards, why not to devise a decent trade off whereby, in exchange for adhering to these more demanding standards, the amount of redistribution available to them (structural and cohesion funds) increases? Instead, the redistribution aspect is played down and the

standards aspect is played up. In other words, one overburdens the decision-making mechanism while holding back the oil that would make it run smoother. This is a contradiction whose resolution would do much more good to facilitating the operation of a EU with 27 Member States than the entry into force of the Constitutional Treaty.