

PREFACE

At a stage when the Intergovernmental Conference is due to start its work on the Draft “Treaty on a Constitution for Europe” submitted in July 2003 by the President of the Convention on the Future of Europe to the President of the European Council it may seem to be late for publishing papers aiming at giving an input to the works of the Convention. The present contributions, indeed, have been presented at the Third ECLN-Symposium which was held as an International Seminar on “The Government of Europe. Institutional design for the European Union” at San Pablo-CEU University of Madrid, the 23rd to 25th January 2003. From the beginning, it has received the attention of political leaders involved in the Convention process, and the papers presented have been circulated to the interested people. Before starting its seminar, the group was given the opportunity to present some key ideas to the President of Spain, José Mará Aznar, and to discuss with him the future of the Union. The seminar than was introduced by Marcelino Oreja, President of the Institute for European Studies, San Pablo-CEU University and former Member of the European Commission. Inigo Mendez de Vigo, MEP and representative of the European Parliament at the Convention was present at the opening-dinner and gave an overview of the progress of the Conventin’s work and the remaining problems. As the debate is not yet over, the Treaty on a Constitution for Europe has yet to be concluded and the process of ratification will not only take many more months but also bring about a broad public discourse on the key issues dealt with in the Constitution, the publication of thoughts, proposals and arguments around the works of the Convention seems to be more than justified as references for a critical analysis and understanding of what has been decided.

Not all contributions, unfortunately, have reached the editors, but the essential views on how a European government should be designed starting from the existing treaties but with important modifications so to meet the three objectives, as *Kirsty Hughes* has put them in its general assessment of the works of the Convention on the institutional settlement so far: “to bring the EU closer to the European public; to create an effective political structure and operation for the enlarged EU; and to give the EU a genuine global role”. Under the title: “The Battle for Power in Europe - Will the Convention Get it Right?” her findings are sceptical but clear regarding the need for one “double-hatted” President of the Union and a “small accountable Commission”.

Not far from this conclusion are the proposals of *Ingolf Pernice* on a “Democratic Leadership in Europe: The European Council and the President of the Union”. He pleads for a combination of a rotating chair of the Council and the European Council, and the President of the Commission to function as the President of the Union, representing it externally and internally according to the decisions and guidelines adopted by the (European) Council. Five draft Articles on the matter were meant to show how this solution would look in concrete terms. On the basis of a description of the existing role of the European Council *Paul Craig* expresses some doubts on these proposals, though the success of the Franco-German “dual Presidency model” is also seen with scepticism. He describes the relationship of the European Council and the Commission as “symbiotic” and finds that the existing system of institutional balance as it operates now works reasonably well. In

contrast to these clearly realistic findings, *Antonio López-Pina* takes a strong stand for abolishing intergovernmental cooperation and for strengthening the Commission as a European federal government for a Union which is a political Union the objectives of which is giving effect to the fundamental rights of the individuals. This would not mean to create a European State but the preservation of the Member States as being parts of a European Federal Republic.

In his contribution, *José María Beneyto Pérez* takes a closer look at the issue of competences which was the historical starting-point for the constitutional process at the infamous Nice summit. On the basis of the constitutional traditions common to the European Union and its Member States he argues that Europe should follow the path of mixed or shared competences instead of the American model of 'dual federalism'. If shared competences remain the cornerstone of the European federal model, the drafting of an enumerative list of European competences a mission which is almost impossible to achieve. Instead, it is held as crucial to improve and develop general rules and mechanisms for the exercise of shared competences. In this context, it should also be considered to codify and specify the rules governing the present second and third pillar.

Some specific experience from the negotiations on the enlargement lead *Vilenas Vadalpas* and *Saulius Lucas Kaleda* to question whether the powers of the European Commission really should be strengthened. The system to which accession was negotiated, for the accession countries, is seen as a "moving target", while for a referendum some more stability would be desirable. A particular problem is identified regarding the monitoring powers included in the Treaty of accession, on the application of Community law in the new Member States which is felt discriminatory. The need for "widening and strengthening of the Commission's executive functions" is finally acknowledged nevertheless. It is interesting to see, against this debate on the Council and the Commission, that European institutions will not be the only actors needed in a functioning European Union. Governmental functions are also exercised by regional and local authorities, and their role is decisive upon the success of the institutional reform.

Francesco Maiani looks for an answer to this question in his contribution titled: "Addressees, Councillors, Legislators. What Role for Regional and Local Authorities in the Union's Decision-Making Procedures?". One of the answers is that the participation of these authorities will "remain rigorously consultative in nature, and it would still be inspired by an essentially 'functional' rationale" resulting in an improvement of lawmaking and implementation through the consultation of regional and local authorities. He argues against the proposal to introduce, for areas in which "constitutional regions" of Member States have exclusive legislative competence, their direct representation and vote in the Council. Though this might be a possible solution legally, in political terms it is argued to be a danger for the "ability of the Union to identify and pursue, in a spirit of solidarity and mutual understanding, a common interest".

The second section of the seminar was devoted to the European Parliament and the role of the National Parliaments. *Jiri Zemanek* introduced the discussion under the title: "Improving the Union's Democratic legitimacy: The European Parliament and National Parliaments". He understands the dual structure of democratic legitimacy in the Union as reflecting the "bipolar nature of the balance of powers and responsibilities". Regarding the

European Parliament he finds that a certain over-representation of small states is not a serious threat to the principle of democracy, and he pleads for an extension of the co-decision procedure and the election of the President by the European Parliament to enhance legitimacy in the Union, while he opposes a dual mandate for the MEP's as well as the establishment of a new chamber representing the national Parliaments. Regarding "legitimacy through the Council" he sees the accountability of the ministers to the national Parliaments as crucial, and he pleads for intensifying a "meaningful dialogue of national Parliaments with the Governments on the basis of tasks and principles of their implementation, cleared by the European Constitution".

While the Convention, finally, has come to conclusions similar to these considerations, the warnings and suggestions made by *George Bermann* from the American constitution-making experience have not really been followed: Under the title "The Constitutional Convention and EU Institutional Reform" he invokes "Simplicity: A Recipe for Constitutional Longevity". His examples for problems in this regard are Justice and Home Affairs, on the one hand, and the presidency of the Union on the other. For him, models like "team" or "joint" Presidency of the European Council have nothing to do with simplicity. Nor is the Franco-German idea of "dual presidency", which he does not find justified either by the argument of institutional balance or by the quest for continuity of the Union's representation. "For the European citizen", he argues, "the EU will seem more confused and confusion than ever, while for the outside world, the EU will have unprecedented difficulty in speaking with one voice"; tensions and disagreement between the two Presidents are predicted, and the inefficacy of the EU may not be outweighed by "any apparent gains in democratic legitimacy or accountability".

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Madrid and Berlin in September 2003,

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