

Constitutional Treaty – Part of the Problem or Part of the Solution?

1.1. Introduction

Many things have happened since the Constitutional Treaty has been rejected first at the French and later at the Dutch referendum. The rejection was followed by the period of reflection how to overcome the constitutional impasse in Europe. During this period new ideas were presented, some more ambitious and therefore usually labeled as too unrealistic or too utopian, some others as more practical and therefore usually in a form of weak compromises. The light at the end of the tunnel is still only remotely twinkling. It remains uncertain whether the European member states and their citizens will ever be able to come out of this impasse with the Constitutional Treaty that should in principal reenergize their economic, social and political lives.

After rejection of the Constitutional Treaty many observers regret that the EU took the path of the European Convention based on the Laeken Declaration. The criticism was that the European project went too far, that the original mandate was not respected and that the European Union got the Constitutional Treaty almost by accident. Others pointed out to the empirical double lock situation. This means that it is theoretically almost impossible to reach the consensus on the strategic issues, such as the institutional arrangement, the set of preferred policies, the role of the Union in multilateral organizations and the role of the Union in the processes of globalization. In addition, some of the countries must put any new treaty on the referendum, whereas some other countries voluntarily decide for such path of ratification due to many various issues. As a consequence, it is practically almost impossible to accept and ratify any major document of a constitutional nature.

Although the comparison is not entirely valid, it is still useful to bear in mind that the US constitution is virtually impossible to change due to the high threshold, which stands at two thirds majority of both houses of the Congress followed by three fourths approval of the state legislatures. As a consequence, the leading constitutional scholars have noticed at least three substantially different historic constitutional regimes under the same constitutional texts, whereas the debate between the originalists and interpreters, between activists and those in favor of restraints has not been resolved to date. There were different historic moments of higher constitutional making.

The question, therefore, is how to proceed with the European treaties, with the European development in the era of complex internal relations, whereby coalitions, programs and ideas are constantly shifting and no substantive agreement on the key issues is emerging. To be sure, in a highly diluted form the enlarged Union can function on the basis of the present treaties. It remains unclear, however, if such an arrangement can last and furthermore, whether it can satisfactorily address the issues and concerns of the present and the future.

On the other hand, the Constitutional Treaty became a symbolic point of European future development. After launching a Convention on the future of Europe five years ago based on the Laeken Declaration, after a subsequent intergovernmental conference, signature of the Constitutional Treaty in November and ultimately after two failed referendums a lot of political capital has been invested into the Constitutional Treaty. Looking from today's perspective one can easily argue that the European constitutional process went too far, that the Constitutional Treaty was not the original intent of the Laeken Declaration, that the sentiment of people across Europe were misread and that many other mistakes were made during the latest efforts to adopt the Constitutional Treaty. Therefore, the argument goes, we need to slow down the process of European constitutionalization, because it went too far and became part of the problem instead part of the solution.

There is, however, another possible approach to the existing constitutional impasse. We may recognize that depiction of the process in recent years is indeed a process that deserves to be accepted as a constitutional process, no matter how different is the character and content of the unique development of European supranational architecture. We may also point out that the Constitutional Treaty itself is indeed a constitutional compromise, an internally well balanced document that seeks to address concerns of the member states and their citizens in the enlarged Union. It also addresses the future role of the Union in the processes of globalization, whereby many of the rules of globalization regarding international trade, struggle against global poverty, climate change, the future of multilateralism are currently also in the process of being significantly rewritten.

In this text I will mainly focus on the latter approach: how to further improve the present text in such a way to open up space for stronger future economic and social development of member states and their regions and how to further strengthen democratic processes of representative and direct democracy at all levels of the Union. Finally, I point to the need of deepened multilateralism as part of the European project development. The European model cannot develop successfully in the future processes of globalization without its more active role in shaping and reshaping these processes. If so, I believe that such a more comprehensive approach would better serve expectations of the European citizens. It would better address concerns which were expressed at both referendums. It would also better correspond with the rich tradition of European liberalism and European social democracy. Therefore, the Constitutional Treaty could still become part of the solution to the European project provided that certain improvements and changes based on the arguments below could be made.

1.2. Deficiencies of the current European constitutional context

Social and economic developments in the European Union in the last two decades were characterized as years of slow economic growth and gradual dismantling of existing social entitlements. Certainly, it was easier to grant generous social entitlements in the golden

period of European economic development before the two oil shocks. It was a period of full employment, high growth rates and low levels of social exclusion. The picture has changed, however, in the last two decades. Yet even in this period of low growth, increasing external constraints and rapid deindustrialization there are highly successful, innovative and cohesive European regions that not only escaped the vicious circles, but they showed that even present circumstances it is possible to combine both, high level of competitiveness and high level of social cohesion. It does not come as a surprise, therefore, that the leading European countries and regions, such as Southern Denmark, north-central Italy ("Third Italy"), Catalonia, Scandinavian countries, Ireland belong to the most innovative and competitive regions in the world. On top of it, the same countries and regions also belong to the countries with the highest development of social index. They regularly attain highest ranking positions in all possible categories of international comparative analyses. Many of innovative approaches in these regions could be successfully transferred and adopted in other European countries and regions that currently fall behind.

In this context it is not unimportant to mention that the overall socioeconomic situation has picked up in the last two years significantly. For example, the growth in the euro zone has been the strongest since adoption of euro, European economies have created three million jobs last year, of which two million were created in the euro zone. The unemployment is still high, but it is at the lowest point in a decade. Equally encouraging is that enlargement works. According to the report of the European Commission, the enlargement contributed to the overall economic growth and to the creation of jobs. As opposed to many fears that enlargement will contribute to outsourcing and stealing of jobs, it is becoming empirically clear that enlargement contributes to creation of jobs not only in the new member states, but also in the existing member states. The trends for the future economic developments remain also very encouraging, especially now that Germany finally picked its growth again. One of the problems, as it appears, is that more positive and encouraging signs only slowly get through, while the perception of crisis continues.

There are other important European countries that have more difficulties in translating higher growth rates in overall development. France appears at the crossroad of these divergent processes. It recently started to grow faster and generated new jobs, but the gap between the privileged insiders and the excluded outsiders remains huge. How to bring higher economic growth to these excluded segments of economy and society appears to be a key challenge of future French development.

The similar is dilemma with the Constitutional Treaty. Constitutional Treaty as part of the problem could lead to the petrification of current policies which are usually described as "the third way". The third way is described as a set of policies that try to combine Rhineland policy of social protection with American policy of economic flexibility. As Roberto Unger pointed out, such a combination did not benefit all and "it has more often been the

generalization of economic insecurity, and the concentration of resources and opportunities in the hands of an elite oriented to the world economy.”

The problem with such a narrow set of opportunities, envisaged by the current form of the Constitutional Treaty is that it precludes or further constrains existing and future innovative policies that are successfully implemented in the most advanced European countries and regions. Instead of opening up to new, more creative and potentially more productive policies of development, the current constitutional setting introduces new limitations. In short, as Roberto Unger pointed out, the current constitutional setting is at the same time too strong and too weak: “weak on universal social endowments, but strong on macroeconomic and regulatory limits to national, regional and local innovation.” It should be reverse. The Constitutional Treaty should aim at higher levels of common social safeguards, it should secure substantially higher investments in education, whereas at the same time it should open up to more local, regional and national development initiatives. In so doing, the rules of competition must be faithfully implemented, both in its negative and its positive form. The negative form of implementation is strict application of competition rules, the positive form requires setting up public venture capital, preferable on a regional basis in order to support start up companies.

There are many experts who noticed in recent years that the very narrow macroeconomic policy framework has been an obstacle to growth and employment. Last enlargement contributed to the regional disparities. Unless concerted efforts are made to narrow the gaps between the most advanced and least prosperous regions in the Union, it is likely that overall economic performance will deteriorate again and contributed to the higher levels of unemployment across Europe. To avoid such a negative scenario, more opportunities and more means should be left to the regions that struggle to catch up with the most advanced regions of the Union. This does not, of course, that all the regions of such a diverse continent can reach the same level of development, but the stress the need that current inter regional and intra regional inequalities are not sustainable.

3.1. European Social Policy

In a long run, only more cohesive regional development can facilitate sustainability of the European model. It is an observation which does not belong entirely to social activists and progressive scholars, it belongs also to the leading European macroeconomists. In his recent working paper Daniel Gros and Stefano Micossi urged for development of a common welfare floor. A common welfare floor is not a matter of some abstract principles of European solidarity or generosity based on the past social democratic tax and transfer policies, it is a matter of economic necessity for Europe.

Welfare states in the era of globalization are not obsolete. The leading European welfare states are also the most competitive and most innovative countries. One recent study showed that the countries that spend more on social welfare tend to be more competitive

and that there are no trade-offs between social spending and higher level of competitiveness. Unlike the claim of the third wayers that competitiveness come first and social spending follows, the empirical study showed the opposite: any attempt to reach higher level of competitiveness requires higher levels of social spending. Here I do not refer to the traditional tax-and-transfer policies, but I refer to much more innovative and more successful social policies aiming that higher investments in education, life long education, in and out of work training and many other supportive policies that help activate labor markets.

Realistically speaking it will be also very difficult to change priorities of European budget despite the fact that the budget reflects preferences from the past and not those for the European future. Even in the same context, however, there are some possible improvements. As pointed out by Micossi and Gros, European social fund at present is not very efficiently used. There is a small maneuver room at present at least for a start to achieve generalized safety net against poverty. The next step is addressing priorities of the European budget itself. Without going into the details of CAP, the present distributive impact of CAP cannot be defended on economic, legal or moral rationale. 25 percent of CAP funds go into the hands of 5 percent richest and most competitive landowners in the core countries in Europe. This part can be either renationalized or omitted without seriously harming anyone, even before addressing the CAP complex problematic. In parallel, rebate in its present form and volume cannot be defended anymore. Without much effort and without raising contribution to the European budget, substantial funds can be released to support social and regional development policies across Europe. The attitude toward migrant workers could in this setting become more relaxed, too.

This is only a very realistic and very practical approach toward more social Europe. At present, there is a growing gap between European rhetoric on social Europe and European social realities. In the future, this gap can be seriously tackled. It is equally realistically to expect that such an approach providing welfare floor could significantly improve image of the Union in the eyes of European citizens.

Little by little we can start creating more successful and more promising European social and development policies. Aim of the Treaty should be not only to empower European institutions to tackle the welfare gap, but also to empower national, regional and local governments to aim at the same goal. Open method of coordination can become a source of cooperative competition between various European actors in launching their own institutional, social and development innovation instead of a source of mere close circle technocratic exchange without much impact on the rest of the societies.

At the end of this trajectory, the budget and its financing can be finally touched upon. The starting point of such debate should be that social policy is a vital part of economic sustainability of the European model.

4.1. Conclusion

In the present text I argued that Constitutional Treaty with certain qualifications can become part of the solution. In my view there is little sense to approach the constitutional conundrum by refurbishing the name of the Treaty. After five years it seems the term has been accepted by the majority of people in Europe. As recent Eurobarometer showed supporters of the Constitutional Treaty outnumber its opponents in each of the member states that have not yet ratified the Treaty

The direction toward listening and addressing real and legitimate concerns of the people seems to be the right direction. The processes of globalization will not wait for Europe to decide which path to follow. Many eyes, many expectations inside and outside Europe are directed to the resolution of European constitutional impasse. Can the leaders in under such a time pressure find the way toward the workable compromise? There are clearly many divergent interests and expectations. In this effort it is important to understand that the alternative constitutional visions based on pluralistic, open, democratic societies of Europe exist.