José María Beneyto

From Nice to the Constitutional Treaty: Eight Theses on the (Future) Constitutionalisation of Europe

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I. A Constitutional Moment

Who now remembers Europe’s Constitutional Treaty? There was however a relatively easy road from Nice to the Laeken Declaration and then to the work of the Convention and the drafting of the first document in the history of European integration risking the “Constitution” banner on its front page, even if it finally had to be modestly renamed as a “Treaty establishing a Constitution for Europe”. Compared to the draft Constitution prepared by the European Parliament in the follow-up to the Maastricht Treaty, whose promoters were quickly branded as old fashioned federalists, the momentum surrounding the elaboration of the Constitutional Treaty was a happy one. The discussion about a Constitution for Europe and the debate on the future of Europe became a significant political issue and it was even made – by Jürgen Habermas, particularly – intellectually fashionable. It seemed suddenly as if the destiny of the European continent – the big question marks about Europe’s identity, its specific response to the challenges posed by globalisation, the defence of its values and the promotion of its ideas of citizenship and mixed economies – had to be necessarily linked to the fate of the final results of the Convention.

There was indeed a ‘Constitutional Moment’. Although Valéry Giscard d’Estaing, the president of the Convention itself, had dubbed it the European Philadelphia, the Convention certainly lacked some essential elements in order for it to be officially considered a constitutional convention; above all, the lack of enthusiasm of some member states’ Governments with the process and, as time would demonstrate, also a perceived strangeness by European citizens. Nevertheless, with the hindsight of later years, this constitutional moment signals a certain higher level of constitutional audacity, in a sense a departure from the well-trodden paths of Community history. Issues such as human rights, European values, the “European social model”, the characteristic interaction of the European construct between unity and diversity in its relations with member states, the question of the democratic deficit, the role of Europe in the world, or the “telos” (“finalité”) of the Union, were brought for the first time openly to the fore, together with more technical matters – a renewed institutional structure, a clarification of the division of competences between Brussels and the national...

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1 Weiler (2002).