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

I. A Constitutional Moment

II. The reshuffling of the institutional balance of power

III. The lack of a global strategy in Foreign Affairs and Security, if not resolved, may impair the new, important institutional innovations introduced in this area, whose efficiency remains to be tested

IV. If the direct consequence of the terrorist attacks in New York, Madrid and London was a substantial communitarisation of matters relating to the Area of Freedom, Security and Justice, this may well have been achieved to the detriment of the further development of other policy areas

V. The Convention debates showed quite remarkable differences among member states with regard to their views on economic governance and on the social dimension of Union policies, making these two areas in which no significant innovation was introduced in the Constitutional Treaty

VI. The Constitutional Treaty did not take a position on the issue of increased complexity and difficulties of internal management of the European Union, but it removed important obstacles to the functioning of enhanced cooperation

VII. The Constitutional Treaty failed to address new concerns of citizens and to legislate for the future in increasingly relevant areas

VIII. The Constitutional Treaty did achieve significant improvements in the democratisation of the Union, but it did not substantially overcome the perceived lack of closeness to citizens

References
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

1 Weiler (2002).