

Analysis of the European Constitutional Treaty

Demopunk Net. September 2003

(Revised in 2005)

Introduction

Present document is part of Demopunk Net's watching of the European Constituent Process. In November 2002 a first document "[Criticism to European Constituent Process](#)" was published, and in March 2003 the report "[The European Constituent Process. The Spanish Perspective](#)" was submitted to the IRI-Europe.

In July 2003, release of the first official draft of the European Constitutional Treaty provoked the need of this new document; taking on the duty to inform democrat people about the severe democratic deficit that is formalized by the constitutional draft. Faced with the evidence that Regime and its propaganda media are indoctrinating people with a triumphalist and non-critic image, Demopunk Net releases present analysis to argue, using the own constitutional draft, the acute lack of political freedoms and the deep autocratic nature of the European Regime.

In 2005 this document has been revised using the final text of the Treaty and its attached Declarations.

The European Constituent Process

When in December 2002 european elites stated the so-called Declaration of Laeken, indifference of people was eloquent. No emotion was sparked by creation of the large Convention on the Future of Europe, despite of its aims mutated early into writing a constitutional draft for Europe.

Democrat people witnessed how the birth of a constituent process was staged lacking the least sovereign legitimacy. Nations appointed its constitutional paladins, and the European Parliament sent a small representation. Elected deputies of the European Parliament, accustomed to lack legislative initiative (or perhaps bounded by the imperative mandate that links them to electoral lists written by their elites) did not rise up collectively before the germination of a non-elected assembly, that was taken on functions typical of an elected parliament. A proper example of constituent process.

It is hardly surprising that works of the Convention passed almost anonymous. Likely, not even one out of every thousand europeans knew about so "transcendental" activity, a fact that statistic services of Regime could have verified. Neither them nor propaganda media accomplished the least monitoring, until a few months ago curtains began to be removed uncovering the work almost finished. The constitutional artisans applied finishing touches, while here -in Spain- press of fascist tradition focused its constitutional "analysis" on supporting claims of Vatican to incorporate cristian tradition within the preamble. Popular emotion due to so historical happening was short-lived, may be it never happened. And the Convention was ended surrounded by the same indifference than when it was instituted.

Indeed the constitutional draft does not contribute any significative improvement that can be appreciated by democrat people. Quite the opposite, it protocolizes the autocracy that has been built in Europe, treaty after treaty. An autocracy that, according data from European Institute for the Initiative and Referendum IRI-Europe, drives by several ways more than 60% of normative in every member state.

European democrat activism, participated by the IRI-Europe among others, set a quite modest goals focused on achieving constitutional draft were ratified on paneuropean binding referendum, goal that eventually was reduced to achieve ratification using national legislation of every member state. Some elites gladly have accepted this minimum claim, perceiving political polish that can be applied to a constitutional text empty of Political Freedoms, a text that paradoxically bans the own paneuropean referendum, by mere omission. The President of Spanish government was in favour to exercise his personal right (no Spanish institution has got it) to hold a consultive plebiscite on the

constitutional draft. Remembering the thankless plebiscite on civil integration into the NATO, we hope boredly to see in Spain something like an Eurovision festival.

The constitutional draft

Almost everybody start analysis of the huge constitutional text holding a certain expectation to find out moderate improvements, at least in the institutional level. Soon, evidencia makes expectation into irritation. The sole significative novelty consists on European Parliament ratifies the appointment of President of European Comission by the European Council, as well as the motion of censure. The constitutional text does not contribute any Political Freedom to people, puts the unique elected institution (European Parliament) into a severe weakness, states imprecisely the electoral system used to constitute it (as if every electoral system were equal!), grants the efective power to the Council of Ministers and the European Comission, institutes discretionaryly many functions (including the judicial one) without parliamentary ratification and states a pathetic procedure of constitutional amendment. Everything at many levels of indirection from popular sovereignty. Autocracy.

Member states have stabilized self-proclaimed democratic regimes, where Public Freedoms are staged while Political Freedoms are banned or severely controlled; regimes that will be qualified by History as pre-democracies. But the conglomerate instituted by the european constitutional text is an AUTOCRACY, an evolved form of tyranny that replaces Force by Deception. Something that democrat people have to fight.

From other points of view, this text becomes into the first constitution stating as own capitalist principles ruling the so-called globalization, and protocolizes the militar alliance with the USA. With so high and universal aims, irritation lands softly on the usual melancholy when on the other side the [Article III-377](#) states incompetent the brand-new Court of Justice *"to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security"*, or when the [Article III-137](#) allows freedom of establishment only for *"self-employed persons"*, or when the [Article III-142](#) accepts only the mutual recognition of companies and associations *"save for those which are non-profit-making"*. Or when this quite long constitutional text, with vocation for interventionism, considers *"pay, the right of association, the right to strike or the right to impose lock-outs"* out of EU scope (seemingly this [Article III-210.6](#) have not deserved a strongly response of unions of the Regime), o when the [Article III-436.1](#) states that *"the Constitution shall not preclude [] the production of or trade in arms, munitions and war material"*. What not? ... melancholy.

The european institutions

The constitutional draft consolidates present status of institutional relations of the european autocracy. Some institutions has not any relation with popular sovereignty, some ones are placed at several level of indirection from it, and only the European Parliament (EP) is directly elected keeping for it a rachitic role. Let us take a brief revision.

In the apex of the autocracy are the European Council, a sort of Standing Committee of Treaty of Versailles. Spanish representative is the monarch, although by complex and unknown reasons he delegates to President of Government. The Council appoints the President of European Comission who noveltyly is ratified by the EP. It keeps for itself the initiative to the constitutional amendment, the main decisions on foreign and security issues, and even legislative capacity in special procedures.

The so-named Council of Ministers (CM) is a polymorphic institution whose members are variable, appointed discretionaryly by governments (in Spain without parliamentary ratification). It is the transmission chain of the national executive powers, a kind of travelling executive power. It has got huge powers, particularly in the legislative scope. Its popular representation is to be disintered at several levels of indirection.

The most stable executive function is accomplished by the so-called European Commission (EC). It is in charge to elaborate laws and regulations (many of them are mandatory), to execute resolutions and to inspect. It has got the juridical representation of the EU before member states and the rest of the world. But perhaps its most impressive power is to have got THE EXCLUSIVE RIGHT OF LEGISLATIVE INITIATIVE. It should be thought about twice to assimilate it. Its President is appointed by the mentioned procedure, and he or she appoints the commissioners of EU by a rotating schedule among proposal of the government of the moment; of course without parliamentary ratification.

Other institutions in the constitutional draft are the European Central Bank, and the highest judicial institutions: the European Court of Justice that taking in the role of constitutional court and the High Court. Their members are appointed discretionarily by governments without parliamentary ratification ([AI-29.2](#), [AIII-382.2](#)). Shocking.

The large Economic and Social Committee and the Committee of the Regions are instituted (350 members every one). For the last one, every fickleness are deactivated banning its members could belong simultaneously to the EP ([AIII-386](#)). Their consultive nature turns them into mere sinks of expenses. The European Ombudsman maintains the same ineffectiveness and pretty name than at the national scope.

The EP is the unique elected institution of the European Regime. As novelty, it ratifies the appointment of the President of the EC ([AI-27.1](#), [AI-20.1](#)) and can exercise the motion of censure collectively on it ([AI-26.8](#), [AIII-340](#)), that cannot be exercised individually on its members. Initiative of this motion of censure is not regulated. The EP is elected by universal suffrage by means of an electoral system constitutionally unprotected ([AI-20.3](#), [AIII-330.1](#)), as if all the electoral systems were the same! In Spain we go on electing european deputies by close lists of party, written discretionarily by elites of parties. A real democratic display.

Legislative function of the EP has implausible lacks. It lacks legislative initiative that is reserved as exclusive right of the EC. But besides it shares the ordinary legislative procedure with the CM ([AI-34.1](#), [AIII-396](#)), in such a way as a law cannot be passed without authorization of both institutions. This incredible parity is not precisely symmetric, because the CM approves alone the Pleiades of regulations and european decisions ([AIII-428](#)), "minor" legislation many times with mandatory nature. Reading of such a institutional role deserves a pause to assimilate its repercussions.

The rachitic institutional role of the EP puts it almost as a "puppet" institution, whose main function is to stage popular sovereignty within the european autocracy. This role can be more clearly displayed listing what can NOT be done by the EP:

- It has not got legislative initiative, [AI-26.2](#)
- It has to address EC to submit a legislative initiative that can be rejected, [AIII-332](#)
- It does not appoint, only ratifies to the President of the EC, [AI-27.1](#)
- It does not appoint nor ratify individually the commissioners of the EC, [AI-27.2](#)
- It does not appoint nor ratify the Union Minister for Foreign Affairs, [AI-26.2](#)
- It does not appoint nor ratify the judges of the Court of Justice, [AI-29.2](#)
- It does not appoint nor ratify the board of the European Central Bank, [AIII-382.2](#)
- It does not appoint nor ratify the members of the Court of Auditors, [AI-31.3](#)
- It does not decide the composition of the Committee of the Regions and the Economic and Social Committee, [AI-32.5](#), [AIII-386](#)
- It has not got effective competence in foreign and security issues, [AI-40.8](#), [AI-41.8](#)
- It does not dictate the regulations of the competence, [AIII-163](#)
- It does not make nor inspect the guidelines of the economic policies, [AIII-179](#)
- It does not dictate the regulations of relationship among financial entities and the administration, [AIII-183.2](#)
- It does not dictate the regulations of credits of Central Banks, [AIII-183.2](#)
- It does not approve the tracking and sanctions for deficit deviations, [AIII-184](#)
- It does not approve the law of control of the deficit, [AIII-184.13](#)
- It does not dictate the regulations of the technical monetary aspects, [AIII-186.2](#)
- It cannot modify the statutes of the European Central Bank, [AIII-187](#)

- It does not make nor inspect the guidelines on employment, [AIII-208](#)
- It has not got effective competence for laws on issues of social policies (social security, laboral leaves, collective defence), [AIII-210.3](#)
- It does not dictate regulations of farming and fishing issues, [AIII-230.1](#), [AIII-231.3](#)
- It is not competent in laws related with environmental policies, [AIII-234](#)
- It has not got effective competence to legislate on police cooperation, [AIII-275.3](#)
- Procedures of parliamentary control on police activity are undefined, [AIII-276.2](#)
- It has not got effective competence to legislate on police procedures, [AIII-277](#)
- It has not got competences in the military interventions abroad, [AIII-309](#)
- It has not got competences in the military investigation, [AIII-311](#)
- It is not competent to authorize commercial agreements with other states and organizations, [AIII-315](#), [AIII-325](#)
- It is not competent to authorize the breaking-off of economical and financial relation due to military reasons, [AIII-322](#)
- Never it does authorize the beginning of negotiations of international agreements, it only authorizes some kinds of agreements, [AIII-325](#)
- It is not competent to activate the so-named "solidarity clause" (terrorism, disasters, ...), [AIII-329.1](#)
- Its investigating committes are ineffective, they are not protected by oath and ending up with a simple report, [AIII-333](#)
- It does not appoint nor ratify the permanent representatives of the CM, [AIII-344](#)
- It is not competent to regulate the access of the Court of Auditors to the European Investment Bank, [AIII-384.3](#)
- It is not competent to approve the regulations of the Court of Auditors, [AIII-384.4](#)
- It is not competent to modify the Statute of the Investment Bank, [AIII-393](#)
- It is not competent to set wages and pensions of posts of the EU, [AIII-400](#)
- It is not competent to authorize "enhaced cooperations" on foreign and security policies, [AIII-419.2](#)
- It is not competent to authorize an "enhaced cooperation" to be funded with the communitary budget, [AIII-421](#)
- It is not competent to lay down the rules governing the languages of the institutions, [AIII-433](#)

This non-exhaustive list about incompetence of the EP reflects a significant part of functions that the constitutional draft keeps for other non-elected institutions (CM and EC), placed at several levels of indirection from popular sovereignty. But perhaps, one of the incompetences provoking the bigger alarm among democrat people is the procedure of constitutional amendment. In general, the EP is only consulted; the effective initiative for the amendment is owned by the European Council and is approved by an Intergovernmental Conference, [AIV-443](#) and following.

In a last institutional note, it would be worth pointing the minimum role reserved to elected national parliaments which do no exceed the category of institutions with right to be informed, according to a protocol attached to the constitutional treaty.

Democracy in the EU

Talking about democracy in the EU is necessarily short. Previoulsy, we have pointed out constitutional deprotection of representative democracy; it would be worth adding that no control about present problems of political parties are tackled, which are announced at european level in the articles [AI-46.4](#) y [AIII-331](#). For the constitutional draft, political parties are institutions so mature and lacking in problems that they deserve only a short wording of acknowledge. Shocking.

In the scope of Direct Democracy the scene is more cheerless than within the own spanish constitution. There is only a form of collective legislative petition before the European Comission ([AI-47.4](#)) that does not lead to binding referendum and another signficative aspects are not regulated. Here the "huge" effort of the Convention to close the EU near to society finishes.

By omission, all the other forms of popular initiative are banned, as the initiative for ratification of laws and treaties, abrogation of laws and recalling of official posts (formally, our democrat champions have made us envious of present venezolan constitution which recognize such Political Freedoms). Binding referendum, and even consultative plebiscite, are banned. Other modern political freedoms as the Participative Budget are likely unknown for many of the constitutional fathers; concepts as self-management or popular subsidiarity are strange at all within this constitution.

Of course constitutional amendment and beginning of constituent processes are so far away from popular initiative than in the spanish regime, or they were in the soviet regime. That is, they are banned. Popular control of war and peace is a mad utopia.

In general, lovers of collecting of hollow nonsenses find quite attractive the [Title VI](#) "*The democrat life of the Union*" (sic). As well as the right of petition which is regulated before the EP, but not before the institutions with effective power, [AII-104](#).

Summing up, in the european constitution we witness creation of a political structure where the "parliamentary democracy" (the first step of the democratic development) are reduced to a scandalous entelechy, to a mere attrezzo which is pretended to show appearance of reality while hiding its real nature: simple scenery. We are not witnessing the birth of a democratic organization, but may be a new model of political organization: an out-and-out "empire-style autocracy".

The Attached Declarations

In the 25th of October of 2004 the final act of the Inter-Governmental Conference is released which will be submitted before the European Council for its formal pass. This act includes the final text of the so-called European Constitution, a significant amount of Protocols and an Attached Declarations. In turn the Attached Declarations is split among the oriented to the own treaty or to its protocols.

The "Declarations concerning provisions of the Constitution" are 30 declarations. Particularly the declaration number 12, "Declaration concerning the explanations related to the Charter of Fundamental Rights" displays some alarming interpretations, not only among the democracy activism, but also among the groups watching the Human Rights through the world. The present report cannot cope exhaustively with the attached declarations, so following only some of information arrived at Demopunk Net are reported.

Article II-62.2,

"No one shall be condemned to the death penalty, or executed."

Interpretation of the Attached Declarations

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary [...] in action lawfully taken for the purpose of quelling a riot or insurrection."

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; [...]"

Article II-66

"Everyone has the right to liberty and security of person"

Interpretation of the Attached Declarations

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law [...]the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants"

Article II-67

"Everyone has the right to respect for his or her private and family life, home and communications"

Interpretation of the Attached Declarations

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals"

Europhiles and europhobes

Propaganda media and academic circles of Regime hide from society the birth, or perhaps it would be more precise to say the fossilization, of the european autocracy; taking a severe and unpunished political responsibility. Meanwhile democrat people with access to information keep alarmed without possibility to get structured. In Spain political opposition to lack of democracy within the European Union is almost residual (for instance, OtraDemocraciaEsPosible.Net), there is rather social-style opposition.

Historically european integration has been criticized from social and monetary perspectives. Criticisms that propaganda media of the Regime have spread, with passionate procedures rather than rational ones, as differences among europhiles and europhobics. To mentioned criticisms, today we must add the alarming political breaking of an autocracy which is easily mutable into tyranny. A modern and evolved form of tyranny based on Deception, and keeping in reserve Force when needed.

Situation is quite worrying. Europhile democrat people, who estimate essential virtues of an united Europe, cannot go on allowing Regime uses them as human shield to stabilize its autocracy. Europhiles and europhobes, european democrats, has today a common goal: to combat and abort the european autocracy.

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