

Is there a need for a European Constitution?

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The project for a Treaty establishing a Constitution for Europe (TCE) aimed to set in stone, via a political text of massive symbolic value – the term “constitution” was not used by accident – the neoliberal principles that have been the benchmark in Europe for a quarter of a century, in Part III of the Treaty, but also in its first part, the one dealing with institutional questions. We find, what can be called the Holy Trinity of neoliberalism: “free and fair competition”, price-stability as a goal in itself, and the “free movement of goods, services and capital” being presented as “fundamental freedoms”. The European Union has thus been the only region of the world to have drafted an economic regime, neoliberalism, in a text of constitutional nature. In effect, this text aimed to fundamentally exclude social and economic policies from any future public debate and from the decision of citizens. It has been rejected by a large majority of French and Dutch people.

This rejection opened up a period of crisis within the European Union, as the governments and the European institutions had not predicted such a result. It must be acknowledged that the global justice movement, and the broader social and citizens’ movements, have not been able to exploit this double rejection to push their agendas on a Europe-wide scale and propose a credible alternative to the peoples of Europe. This inability, on which more must be said, gave free reign to the diplomatic manoeuvres and political initiatives of the governments and the European Commission. We could thus observe, in Madrid, a surreal meeting of the governments that had adopted the TCE, a majority of which had not dared seek ratification by the people, where it was advocated to continue with the ratification process as if nothing had happened. The common declaration of the governments of the EU, adopted in Berlin during the ceremonies commemorating the 50th anniversary of the Treaty of Rome, stated as its objective the placement of “the European Union on a renewed common basis before the European Parliament elections in 2009”. The European Council meeting on the 21 and 22 of June recently rubberstamped this agenda by adopting the proposal, by Nicholas Sarkozy, of a “mini-treaty”. This latest European Council meeting has reproduced the worst moments of the construction of the European Union, reflected in secret negotiations behind closed doors, and whose terms of reference were again incomprehensible to the citizens of the Union.

Thus, the window of opportunity opened by the double rejection of the TCE has closed. In this new situation, it is important that the global justice movement comes up with its own alternatives for Europe, else it risks the chance of becoming irrelevant, in country after country. This is why the debate on the need, or not, to have a European constitution is a matter of great urgency. As such, the term “constitution” is of less importance than its content or the means of its drafting and the method of its adoption. If I am in favour of a European constitution, that is of a founding text, it is because of what can be drawn from 50 years of European integration.

Contrary to common beliefs, European integration has not been completely linear. During the adoption of the Treaty of Rome in 1957, the memories of the war were still fresh. The creation of a Common Market of six countries would help to exorcise past conflicts, namely between France and Germany. While capitalism was organised on an essentially national basis, the Common Market was in fact the cohabitation of nationally regulated markets, with common customs duties and public policies, namely the Common Agricultural Policy. The progressive internationalisation of capital, leading to the neoliberal globalisation that developed from the 80s onwards, would disrupt the situation. Financial and commercial deregulation, leading to full freedom of movement of capital and

other free trade policies, would tip the European project towards neoliberalism.

The Single European Act 1986, together with the Maastricht and Amsterdam treaties would transform the European Union into a privileged space for sponsoring neoliberal policies: reduced control over industrial policies in the name of free trade, removal of monetary policies from political control, progressive dismantling of regulatory mechanisms over agricultural markets, social dumping, etc. It was around that time that the right to free competition, which lies at the heart of the treaties, became an organisational right of the Union, a normative right, a de facto “constitutional” right which reduces the other European texts to mere declarations of intent without any practical capabilities.

The bungled enlargement of 2004 would further confirm the trend for the Union to be transformed simply into a free trade zone. By refusing to conduct genuine European public policies, and particularly by refusing to significantly increase the European budget in favour of the new member states, the latter’s development has been left in the hands of the free market. The attempt to impose, through the Bolkestein directive, the principle of country of origin as a new regulatory principle of the Union illustrates this course of action. Fortunately, this attempt has been, at least for now, blocked by the mobilisation of social and citizens’ movements.

This course of action was made possible only by the exclusion of the people and citizens in the building of the Union. Its mechanism reveals a deep democratic deficit together with a confusion of leadership, which considers the Commission, the executive organ of the Union, endowed with legislative and judicial powers and which turns the Council of the European Union into a legislative body, while it should merely serve as an assembly of national governments. Like in many member states, including France, the executive does not execute anything, but is the source of all political decisions. However, while the Commission holds the monopoly of legislative proposals, no European directive has been adopted without the approval of the national governments, who also negotiated among themselves, and in the majority of cases without submitting them to referenda, the treaties that have fashioned EU-building according to the imperatives of financial capitalism. The adoption of the “open method of coordination”, along the lines of the Lisbon Agenda, further reinforces the role of the governments in deciding future objectives, without ever debating them at national or European levels.

Thus, if EU-building witnessed the emergence of supranational institutions, it was the member states which in effect decided these orientations. Whether in the case of the Council of Ministers or the European Council or the Intergovernmental Conferences (IGC), the states played a key role in the construction of the European Union. Far from being dispossessed of their power, the states have dominated the European scene. The history of EU-building has been that of great state manoeuvres, that of secret diplomacy, only punctuated by discussions with the Commission.

This model of EU-building has led to results that we already know: an antidemocratic and neoliberal Europe. It is with this mode of integration that we must break. Europe has been the business of the governments and the technocrats, but it must become the business of the people and citizens. Besides, it is along the line of the proposal made by the European Attac network which advocates that a “new and democratic Assembly, directly elected by the citizens of all European member states, shall be mandated to elaborate, with the effective participation of national parliaments, a proposal for a new Treaty” and that “any new Treaty must be legitimated by referenda in all member states.”

In fact, it is the total democratic reformulation of Europe that is needed. This reformulation has to be achieved by the people and citizens of Europe who, at the same time, must assert their common destiny. This is why the global justice movement, and also the social and citizens’ movements have

to incorporate a constituent European perspective and that of a constituent assembly that is directly elected by the citizens of all the countries of Europe.

Within the global justice movement in France, particularly within Attac France, two main arguments are propounded in rebutting this perspective, and broadly, any proposition on EU-building is considered as unrealistic and should thus be resisted. Firstly, it is argued that a European people does not exist, citing cultural and political differences between the different European countries and a reciprocal indifference. No European people, no European constitution. This argument “forgets” that the notion of “people” is not an essentialist notion but a historical construction linked to common struggles. For example, the French people – and it applies to all peoples – did not always exist, but it progressively created itself, through struggles, with a consciousness of common interest, with a common destiny, the French Revolution serving as a founding event. Furthermore, this argument “forgets” that constitutions can apply to a space where many peoples coexist. This is the case of multinational states, such as the Spanish state. Thus, nothing prevents the existence of a European constitution which will apply to the different peoples of Europe. The problem resides in determining its content.

The second argument, for its part, points to the absence of a European public space and the inexistence of a public debate of a European nature. This position refuses to admit that the European public space is in the process of being built, through the debates and mobilisations that are we are able to lead. The European Social Forum, despite its difficulties, the European activist networks, such as the European Attac network, the European Trade Union Confederation, though its directions are not wholly satisfactory in my opinion, regularly-held European demonstrations, all contribute to the existence of a European public space and the construction of a European consciousness.

This position underestimates the fact that the setting up of European institutions also contributes to this construction. It does not see, or refuses to see, the structuring role of institutional evolutions in the organisation of a common cohabitation, as is demonstrated by the European Parliament. Thus, following its rise to prominence and growing institutional role, it has become the target of social and citizen mobilisations, as was demonstrated by the mobilisations against the Port directive and the Bolkestein directive, and it has been one of the areas that the social and citizens’ movements managed to influence. The launch of a European constitutional process will thus be an amazing catalyst in the European consciousness, in the construction of a European public space and also in the construction of a European people with the irrevocable affirmation of a common destiny.

A particular concept of Europe and an analysis of the present situation are hidden behind these two arguments. For those who defend this concept, Europe cannot simply be a collection of nations. For them, the democratic framework can only be that of nation-states and the governments possess legitimacy to negotiate treaties, since they are elected via the democratic vote of their citizens. They consider that our problems are fundamentally and primarily derived from European integration. Though the critique of neoliberalism is present in this position, it is relegated to an afterthought and the solutions proposed all lead towards a reinforcement of the role of the nation-state.

This solution seems erroneous to me. It does not acknowledge that it was precisely the intergovernmental construction of Europe that produced the present neoliberal Europe, since the national governments have been the vectors of neoliberal policies. In this case, the strict return to the nation-state system cannot be a protection against neoliberalism. It underestimates the limits of representative democracy in the national context, while criticising these same limitations at the European level. It fundamentally underestimates the transformations that have been brought about by neoliberal globalisation, which make it necessary to have an effective political and economic space that is a counterbalance to the growing power of capital. Finally, it does not take into account the original contribution of European integration, that which allowed the development of peace

among the nations and the necessity to preserve it, at a time when we are witnessing a rise in nationalisms due to the collapse of the Soviet Union and the onset of competition between peoples through neoliberal policies.

Finally, I would like to raise the problems posed by the nature of a European constitutional text and its modes of adoption. Does the existence of a European constitution threaten the existence of nation-states and does it signal the creation of a federal concept of the European Union along the lines of the United States of America? I don't think so for two reasons. Firstly, a number of policy areas will remain, for a long time in my opinion, within the strict control of the states. Foreign policy seems a good example to me. We could certainly hope for a better coordination of the European policies in this area, but certain differences will not disappear easily. The case of the American invasion of Iraq sticks in mind. Any position embraced by the Union on this type of subject will have to be taken with the unanimity of the states.

More importantly, for the moment, the European Union has to preserve its double nature, a Europe of states and a Europe of citizens. Firstly, because the European public space is still developing today and we cannot pretend that this space is united. Secondly, because the national framework can still be an important focal point for social and citizen movements to shape European integration, as was shown by the case of the TCE. Until now, Europe has essentially been a Europe of states, but it must also become a Europe of citizens. All the debates on the content of a future constitution rest on the articulation of these two aspects. This brings us back to the mode of adoption of such a text, which must be drafted by a constituent assembly directly elected by the citizens, but also adopted by the peoples of Europe through referenda, with each people holding a veto right over the process.

Finally, such a text cannot simply describe the institutional mechanisms of the Union. A constitution should not contain any precise economic and social policies as does the TCE, in its Part III, but it must define the values that the society wants to hold and the objectives it sets itself to attain. Thus, for example, in the preamble of the French constitution, there are certain economic and social policies such as the "right to obtain employment", the "right to strike" or the necessity for an "enterprise whose exploitation has or obtains the character of national public service (...) (to) become the propriety of the community." The principles and major objectives that are inscribed in a constitution are always the subject of political and ideological struggle and depend largely on the balance of forces at the given time.

The principles that we want included in a text that reformulates the Union will depend on the balance of forces that we will be able to build at the European level. Such principles are the opposite of the neoliberal Holy Trinity that the governments wanted to impose on us in Title I of the TCE. That is, beyond the precise functioning of the institutions, the political battle will shape the nature of the European Union: a neoliberal Europe or a Europe of rights and solidarity among the peoples.

P.S.

* Pierre Khalfa, national secretary of Union syndicale Solidaires, and member of the Scientific Council of Attac-France.