

# From “constitution” to “reform” or from bad to worse

Susan George

*Chair of Transnational Institute<sup>9</sup>*

*The European elites have never digested the French and Dutch ‘No’ votes on the Constitution and now they are striking back with the so-called “Reform Treaty”. This latest, being pushed through the Europeans process with unseemly haste so that European citizens cannot interfere, is just as complicated, just as neo-liberal, just as unjust as the defunct Constitution it replaces, writes Susan George.*

The French ‘No’ vote of 29 May 2005 in the referendum on the European Constitutional Treaty [ECT] was often misunderstood outside France [particularly in Spain]. Many thought it was a right-wing, regressive, anti-immigrant, anti-Turkish or anti-Chirac protest vote.

Probably 18-20 percent of the No vote could be attributed to such motivations, but even our worst enemies - and I say “our” because I campaigned vigorously for the ‘No’ - admit that it was a progressive, pro-European rejection of a deeply flawed proposal. We wanted Europe, but not that Europe. The ECT was a triumph of anti-democratic, anti-social, neo-liberal legislation which would have been nearly impossible to change. The media, political and corporate elites voted massively for the ‘Yes’ [in the rich Paris suburb of Neuilly 85% voted in favour] whereas ordinary working people saw through the constant propaganda and mostly voted No [85 % in one working class suburb of Rouen, for instance]. Turnout was 70%, up by more than half from the mere 46 percent that had bothered to vote in the European parliamentary elections a year earlier.

The No was the French and Dutch answer to a text that described in detail precisely the Europe we don’t want. The people were entirely absent. The Convention not elected but appointed. Although national or Euro-parliamentarians were among the 105 members, they were not elected for that purpose and they could not even propose text, only comment on and amend text proposed by Giscard d’Estaing and his vice-presidents. It was hugely complex and long. It subjected Europe *ad vitam aeternam* to NATO for its defence policy and to the most narrow kind of neo-liberal economic policies where “free and undistorted competition” was far more important than worker or social or environmental rights. It was a recipe for the destruction of public services and for a “race to the bottom” with regard to wages, working conditions, and social, fiscal and environmental policies. The people were supposed to be entirely absent, as they were absent from the text itself, but when they actually read

<sup>9</sup> 5<sup>th</sup> September 2007. Published by the Fundació Sistema in TEMAS, issue no. 155, October 2007.

## Budgeting for the Future, Building another Europe

---

the book-length document that was to seal their fate, they rejected it. It was a great moment.

Immediately after the French and Dutch votes, European Commissioner Gunther Verheugen said, "We must not give in to blackmail": this nicely summed up the Commission's views on popular sovereignty. The Eurocrats learned their lesson; so did national governments. Do not, under any circumstances, allow the peoples of Europe to say anything about their future. Do not allow referendums; push the next text through leaving no time for discussion or debate. Leave all the anti-democratic, neo-liberal measures just as they were in the Constitution, or make them more so, but make sure they are even more difficult to identify and the text even more complicated to decipher. Make sure too that the new Treaty, once approved by governments, cannot be altered. In a word, or a slogan, Down with Democracy!

Now, two years later, we have the new Treaty, called in French "Modificatif" and in English "Reform". It is everything one feared, and worse. Our leaders didn't even bother to tell us they were working on it until the 50th anniversary celebration of the EU in Berlin in March 2007. The Portuguese presidency presented the draft on 23 July; the Inter-Governmental Council [IGC] is to adopt the final draft on 19 October and the Treaty ought to be ratified by all 27 members before the European elections of June 2009. As far as I know, only Ireland will hold a referendum [mandated by law]. President Sarkozy of France has already announced that the French Parliament, where he has a comfortable majority, will ratify it [apparently he feels the people might still prove to be disobedient and dangerous].

At least 80 percent of the legislation passed in every European country now comes directly from Brussels, which alone shows how vital it is for European citizens to understand what is happening. Furthermore, not only do European take precedence over national law but the European Court of Justice has decided and reiterated that any rule promulgated by the European Commission also takes precedence, even over national constitutions. In other words, whatever its name, the new Treaty will be just as strong legally speaking as the dead Constitution.

Here is the state of play and congratulations if you understand it. First, the Constitution, which would legally have repealed and replaced all existing treaties, is formally "abandoned". The Reform Treaty modifies the two existing treaties which are [1] the Treaty on the European Union [i.e. Maastricht Treaty, as modified by the treaties of Amsterdam and Nice] and [2] the Treaty Establishing the European Community [Rome 1957 plus later modifications]. The Constitution may be dead, but the changes it introduced are renamed "the innovations resulting from the 2004 IGC", which is the one that approved the Constitution and sent it out for ratification. Got that?

The 2007 IGC is mandated to merge and mesh 296 modifications into the two existing treaties, along with the "innovations" introduced by the dead Constitution, except a few listed exceptions. The modified treaty will come to 410 articles, often extremely detailed, 146 pages and 62.000 words [in the French version]. Twelve protocols [69 pages] and 51 declarations as well as various annexes have all the same legal value as the Treaty itself.

According to a thorough analysis by Robert Joumard, the text remains, despite its length, highly ambiguous. The way decisions are taken varies from one area to another and there are 177 different areas of competence. More or less demanding Qualified Majority Voting will apply to about 120 of them, but unanimity remains the rule for revising the Treaty, for fiscal policy and most aspects of social and environmental policy, not to mention foreign and defence policy. The Commission emerges with its powers increased whereas the European Parliament, which has little power to begin with, is still excluded from any co-decision in many areas, but nowhere is there a complete list of all the areas from which it is excluded. Some of these, however, are: foreign and security policy, the internal market, monetary policy, most of agricultural and social policy.

The Charter of Fundamental Rights, first proclaimed in Nice in 2000, remains ambiguous and understanding how the Court might interpret it is virtually impossible, but in any case the Charter "creates no new competence or tasks for the EU" so it has little judicial value. It guarantees fewer rights than, say, the French Constitution; furthermore, no matter how weak the Charter may be, the United Kingdom has been authorised not to apply it. This appears to mean that while competition and market freedom are compulsory for all EU Member States, even the most meagre social rights are optional.

What is not ambiguous is the centrality of the highly competitive internal market that remains the supreme common denominator for the EU. Free trade has iconic status. A new article says the goal of EU commercial policy is the "integration of all countries into the world economy...[through the suppression] of barriers to international trade"; elsewhere it calls for the suppression of all restrictions on trade, including non-tariff "barriers" like environmental or consumer protection standards, and on foreign direct investment.

The European Central Bank remains independent of all political control and "price stability" graduates to the status of an "objective" of the EU. Unanimity is still required for any limitations on the free movement of capital, this would undoubtedly include any tax on financial transactions of the kind ATTAC and many other civil society organisations call for. Many provisions weaken public services, which remain subject to the laws of competition.

European subservience to NATO for security and defence policy is reinforced and gets a new, special protocol; the Member States promise progressively to increase their military capacities, and the struggle against terrorism justifies military missions to help non-European countries to fight terrorism on their soil.

One could go on for pages more, but the main points are these: the new Treaty retains most of the rejected Constitution. It is uniquely neo-liberal in letter and in spirit. It has been put on the table with unseemly haste and no public debate has been, nor will be allowed on a text of supreme complexity. Amendments and revisions require unanimity, tantamount to making them impossible. The Commission will continue to hold practically all legislative and executive power. The EU will be legally tied to the United States defence Establishment [and thus to its Commander in Chief, the US President.]

Citizens of Europe: this is your last chance.