

Quo Vadis? or: Is standstill really not more than it suggests?

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Introduction

There is some reasoning on the well-known spectre Marx and Engels wrote about. The question is, of course, its character – being a communist spectre. It confronted the spiders of conservatism that caught up mankind up to then and spread its cobwebs over the human brains. In any case there was some kind of movement: the spectre whooshing across Europe and rousing as well the spiders, who aggressively armed for the counteroffensive. Today: Naomi Klein tries to use her own shock doctrine, aiming on warning against the Shock Doctrine used by the American ruling class of Stupid White Men. However, there is some ignorance with regard to the silent revolution, not of the Inglehart'sche spirit but of a sneaking panther that walks along with the various tigers, the European sibling of the in the meantime aged Asian forefather is the Celtic tiger, not yet entirely resting in peace; but for some already visibly pushed away for instance by a Hungarian sibling, and perhaps the more catlike kin in the Czech Republic, Slovakia etc.

Looking back, the institutionalised Europe celebrates its 50th anniversary – and if we take the one root seriously – the claim of establishing a bulwark against any new war by establishing an entity that grows increasingly together by exchange, by supporting processes of mutual acquaintance, by initialising programs in certain policy areas we cannot do anything else than acknowledging progress, not to say: real improvements (though we are still far astray from real peace). Still, there is as well a 'but', not concerned with the fact that more could have been done – surely, this would be as well a very valid strand to be discussed. The 'but' meant here is that 'more could have been done' is only valid in an understanding of the notion 'more has to mean different'. There are in particular three points that give raise if not to anxiety so at least for being seriously concerned. These areas are the

- debate on the constitution,
- the topic of (Social) Services of General Interest [(S)SGI] and
- the matter of governance/participatory democracy.

Before actually looking into these issues individually, one general remark has to be prefixed. It would be easy to blame individuals and certain groups for the developments. And it is definitely important to watch out for political faults and failures and as well to name and shame the role individuals and political or administrative entities play in this game. However, it is equally important to be alert and get aware of the fact that we are facing a 'systemic pattern', characterised by the fact of independent decisions, activities and actions in the development of which especially those who claim to act as watchdogs and defenders of human and social rights run danger of supporting processes of undermining the same. And on the other hand, those who are ill-reputed as standing outside, undermining progress are in actual fact much more dealing with the core issues.

The constitutional debate

The debate on constitutional issues is actually much older than the institutionalised Europe – already in the 1920s there had been a European constitutional movement; and although the

‘real debate’ on a constitution seems to be rather recent there had been relevant approaches as well already long time before the recently failed approach. Probably until nowadays the most relevant approach was not the one of signing the *Treaty Establishing a Constitution for Europe*. Rather, more important were earlier Parliamentary Debates. Although they had been left without any visible consequences, the reason for seeing this approach as more important is that this was a political rather than a predominantly institutional movement.

What happened up to now can be summarised in a simple and brief presentation – the skeleton that remains after taking off the fluttering – and flattering – accessories of the intergovernmental conferences and in particular the Convention (2/3).

The first ‘serious’ attempt of establishing a European Union merge into a constitution and being constitutionally based failed with the “No” in the referenda in France and The Netherlands. It can be said that this was the first time there was a serious concern about the need for a public debate. For instance the push to overcome the ‘Eurosclerosis’ of the late 1980s by the Delors Commission was very much a matter of developing somewhat popular (though not populist) policies from above. On the other hand, the result of the referenda in previous changes of the Treaties – for instance in Denmark and Ireland was left to re-negotiations between European institutions and the national governments, and ‘good-will-campaigns’ by the national governments. Different when the Constitutional process came to an end: After a brief paralysis the shock was overcome, this time the Commission (especially Commissioner Margot Wallstroem coming to the fore) urged a ‘public debate’, a plan D (see http://europa.eu/debateeurope/index_en.htm) – not least aiming at increasing the visibility of democratic claims. I choose this formulation as no major concern on principally increased democratisation could be made out. However, the ‘real’ dimension can be seen in some kind of moving towards the national levels, at least attempting a more proactive and ‘visible’ approach on general EU-policies in the member states. The reader may him/herself judge how far this can be seen as actually practiced strategy. Seen from the experience in Ireland and the ‘National Forum’ – the showcase in many EU-debates in Brussels and elsewhere – serious doubts are put forward from the side of the present author. As well, the increased support for various actors in order to support national awareness raising campaigns seems to be nothing having a mentionable effect (see e.g.

http://ec.europa.eu/citizenship/pilot/ucmta_en.html). In any case it seemed to be clear that a new ratification process on the previous draft would be not advisable with a major success. Especially worrying, however, is that after the initially at least displayed departure, the next step was one behind rather closed door. Even in Brussels, the phase before and with the newly amended Treaty is more or less a matter of suspicion and convulsive secretiveness, leaving the matter very much one of technical changes and cautious hesitation. As plans stand now: The Portuguese presidency conveyed an Intergovernmental Conference, having negotiated a new Treaty between July the 23rd and middle of October the summit during the Portuguese Presidency concluded the IGC with the new legal text, though this still needs to be ratified [the member states chose different ways, some seeing ratification by the Parliament as sufficient; others chose referenda for this purpose].

The gladness pictured in the Financial Times the day after the summit, seems to be more an expression of purpose-lead optimism. Looking from a wider and historical perspective, the results can barely be treated as progress – moreover, politically honestly assessed they are more likely a retreat:

** Rather than agreeing on any kind of a Constitution (4) the new result – under the common heading of a **Reform Treaty** – consists in particular of three parts: (a) the **Treaty on the European Union** (as previously), (b) the **Treaty on the Functioning of the Union** (previously Treaty establishing the European Community) and (c) **Protocols** attached to the actual Draft Treaty. This means not least that even the aim of the simplification could not be reached (for*

people working in the field this opens of course in addition the awkward perspective that we can learn again the new articles, staying with the formulation of ‘article ..., previous article ...’ or ‘article ..., changed to article ...’, being aware that this will be another as well legal makeshift). Thus, the acceptance of institutional changes remains half-heartedly.

Of importance is in this context as well that the ‘denominations “law” and “framework law” have been dropped, consequently the old, politically and symbolically weaker instruments are continued to be applied – though it may be in cases indeed only of denominative meaning, it is in actual fact a political statement linked to it, weakening European powers at least in their independent political message.

** The 6 Titles are concerned with Common Provisions, Democratic Principles, Institutions, Enhanced Cooperation, External Relations and Final Provisions. Even if – legally binding – reference is made to the Charter of Fundamental Rights, the opt-out clause in particular for the UK, but possibly as well for other member states remains a mind-boggling distortion.*

** In general it can be said that despite the retreat the institutional notion still directs towards a European State – the strengthening of the role of the national parliaments for instance does not contradict this process; rather, read together with the orientation on the double majority voting system it shows for instance some germs of a double-chamber system as it is known from many European parliamentary systems.*

** Two particular issues of concern in the social [policy] area are the reference to (a) services of general interest and (b) to participatory democracy.*

Regarding SGI we will find a protocol, annexed to the Draft Treaty, reflecting very much the current three – contradicting – principles: (i) the public responsibility for services of general economic interest is recognised as one of the ‘shared values’, (ii) the competence of the member states with respect to services of non-economic interest is underscored; (iii) implicitly this means that the validity of the principle of competition law is now enshrined in the Treaty as this is the only thinkable reason for highlighting the difference between economic and non-economic services (see below).

With respect to participatory democracy the Draft Treaty highlights the role of listening to public opinions, transparent dialogue and consultations and finally the possibility of plebiscites (see below).

At the end, the most important is that the EU still does not have a constitution – and coming back to what had been mentioned before by looking at the initiative under the political leadership – we can formulate in a more pronounced way: Europe did still not constitute itself as true political entity and two questions have to be raised:

Constituting Europe and the European Constitution

Is the institutionalised Europe mature enough to constitute itself as entity? What we have to acknowledge is that such constitutional process is at the end though not identical with, but at least very kin to a process of emergence of a new state. If we look at the reality, there are two major issues that have to be considered are the following.

1. Although there is some simplification in the usual bringing to the fore of the argument, the EU always was and still is a dominantly economic entity. It is dangerous as it establishes a dichotomy between economic policies, fading out the fact that economic relationships are actually social relationships. It is equally dangerous to see this solely as matter of the dominant influence of specific groups or fractions. Although this is of course true in one sense, the actual influence goes much beyond and should be reflected by applying for instance the perspective developed by Antonio Gramsci with his reflections on hegemony. – Applying such deeper perspective is important not least

in order to understand some submissiveness of forces that are in general terms (and in their self-understanding) critical.

2. Actually it is nevertheless not quite right to say that we are dealing with an advanced economically integrated EU. Rather, the competencies of the EU-institutions are even in this area largely reduced on matters of coordination and what Scharpf called 'negative integration'. In other words, even the advancement of the constitutive process in an economic perspective is by and large questionable – and important exception will be dealt with in the following section on S-SGI's. Though we find competition policies, we barely find industrial policies, structural policies, developmental policies etc. And much that can be found is actually an offshoot from research-investment policies – being as well, but not solely led by industrial policies.

A European Constitution and the Constituting of Europe

Another major issue is if actually a political contract is sufficient as mechanism constituting a 'European state'. Again, this question starts from the assumption that we are dealing – at least in the long run – with a process of state formation. Despite the complexity of the debate, we have to see that any state formation has to deal at least to some extent as well with the process of formation of a society. Two major issues, then, are (a) the emergence or development of a demos and (b) the establishment of a valid, legitimate entity – in other words, we are dealing with a bottom-up process on the one hand and a top-down process and finally with the politically difficult to achieve but essential at least sufficient correlation, if not actually congruence of both.

Looking at the demos, we have to consider five factors as essential, namely rights, trust, public spirit, public discourse and solidarity (*see as well 2.1. in Herrmann, Peter: Social Professional Activities and the State; New York: Nova Publishers, 2007*). However, looking at the reality of the constitutional debate, it is rather obvious that it undermines exactly the required development. Let us look briefly at the five factors mentioned:

*** Rights**

Although an optimist interpretation can make out some progress in this area and although it is definitely crucial that reference is made to the Charter of Fundamental Rights, we can see in particular with the restated opt-out-clause especially for the UK that we still have to go a long way before we can really consider EU-citizenship as fundamentally fulfilling citizen's rights as for instance made out by T.H. Marshall in his work on *Citizenship and Class*. Sure, this does not mean to accept Marshall's work as *Ultima Ratio*. Nor does it mean to overlook the principal legal difficulties of England, being actually itself without constitution, employing – together with some other EU-countries – a common law approach and the (im)possibility of accepting legal standards as laid down in the Charter. However, one point that had been brought forward during the debate was the concern the Charter would impinge on national sovereignty as it guarantees for instance the right to strike.

Of course, this brings forward another crucial issue, namely the importance of considering the lack of social rights already in the individual member states. The developments over the last years and structural determination of the future development by the Lisbon-goal on competitiveness are reason for major concerns.

*** Trust**

Over 50 percent of the people in 18 of the 27 countries covered by the Eurobarometer study on the European Social Reality (*Fieldwork November – December 2006. Publication February 2007; http://ec.europa.eu/public_opinion/archives/ebs/ebs_273_en.pdf*) did not trust in any political institution. In this context the following statement of the report deserves attention

Overall, European Union citizens appear **fairly critical about collective life**. The **tendency of EU citizens to distrust public institutions** may help explain why around a third of EU citizens expect the **next twelve months to be worse when it comes to the economic situation and the employment situation** in their country (34% and 33%, respectively). The same critical stance towards collective life is apparent from the contradiction that while people in work are confident that they will keep their job, EU citizens are **most concerned about unemployment** (36%).
(ibid.: 83)

Unfortunately – and characteristically? – the report does not systematically and coherently evaluate any other issue around trust (5). Still, it is evident from other studies that trust is in various regards on a decline – this concerns aspects of for instance the structural development of societies, economic development and inter-individual relationships. There are as well issues that have to be raised with regard to feeling oneself as European citizen versus citizen of the respective nation state.

* Public Spirit, Public Discourse and Solidarity

As I am here not aiming on a broad empirical analysis so I will take these issues together, pointing only briefly on the fact that a public discourse can only hardly be made out. Looking at public discourses around European issues – including electoral campaigns for past elections to the EP, referenda etc, fundamentally the following pattern arises (though with exceptions). National issues still fundamentally coin debates. Where European issues are seriously taken into account this means not least that at the same time a defence position is taken: in this context, it is interesting that – leaving the UK aside – those countries that are generally seen as Eurosceptic are those that are rather advanced as far as the implementation of European legislation is concerned. As well, the referenda in France and The Netherlands had been guided by a high degree of information and awareness.

Taking this as background, we see ideologically and factually far away from Europe as reality. This is, of course a statement that needs qualification: In actual fact, the EU is – as well in perception – a major source for financing projects as well in the area of socially/ social policy relevant issues; the EU is a major legislator – be it directly or indirectly; the label *Made in Europe* gains increasing force and looking at research (funding) we can see more and more the *Think European*. However, although the list could be continued, there are two obstacles in the way of further Europeanisation: The *Think European* actually means to a large extent: think global. In other words, the validity of a claimed European Social Model is in large arrays on the verge, subordinating itself in reality under the *American Dream*. And furthermore, the *Think European* is to a large extent still a rather elitist project – or at least caught in contradictions: On the one hand it means, that people actually act European (for instance when it comes to research grants, projects in the social area etc.); however the thinking – not least the thinking of many of European model scholars and students – is for the good and for the worse – very much caught in the national huts und palaces. On the other hand, in many cases exchange, cross-border movement of people and goods and services is very much either holiday experience or an experience against the odds. In other words, the old problem persists: Those who leave the huts arrive at the closed doors of the palaces; and the warriors of the palace are fully occupied by the war against the huts. Again in other words: European integration and European constitution is relatively strong as long as no demos is needed; however, where a real demos is needed, Europeans who freely and truly cross borders without touristy ambitions it seems that we still have a long way to go. And in this context the bluff package of a non-constitution seems to be worse than just a standstill would be.

Competitiveness as General Interest – Generality of Competition

It had been mentioned that services of general interest gained a particular recognition now as well in the primary law. As said, the protocol implies the contradictory notion – leaving them between public responsibility and competitiveness. However, looking at the debate over more than ten years now, it is questionable if any progress has been made (*see as well the [last issue of SOCMAG](#)*). The general development (*see for a – though affirmative – presentation on some main stepping-stones: [Activities of the European Union. Summaries of legislation. Social Services of general interest \(<http://europa.eu/scadplus/leg/en/lvb/l33230.htm>\)](#)*) can be characterised by the following five points:

1. The advance of the competition watchdogs and general, so ‘soft’ assail on public services, demanding the forbearance of any measures contradicting ‘free competition’ – this went hand in hand with a lack of resistance on the side of the ‘network industries’ which had been the main (and only outspoken) target of EU-policies in middle/end of the 1990s. The providers of social services, in particular the non-governmental/non-profit providers in the field had been by and large orienting on a waiting loop.
2. The latter attitude changed then, as developments were obviously causing problems for some of the providers, in particular problems due to the lack of legal certainty. This meant a double strategy from the side of the providers: trying to keep the issue on a low flame, but at the same time asking for legal certainty. This request was going hand in hand with the outspoken conviction that the orientation on competition and the strategy of privatisation could not be applied to the social sector. It was probably an irrevocable mark of Cain that these debates hardly included a more general critique, rejecting the privatisation of the so-called network industries.
3. Thus, rather than explicitly aiming on a defence of social services as public rather than private issues the debate remained politically weak, allowing politicians by and large to push the matter into the framework of a largely technical debate, considering the fundamental issue as agreeable: the principal subordination as well of social services under the aegis of competition law of a privatist market strategy.
4. ‘Social issues’ had been consequently left to a interpretation of natural and/or positivist law based moral order, rather than looking for a different legal framework. What sounds rather abstract here, has in actual fact very concrete expression: ‘social actors’ – especially representatives of some national social departments as the German, Austrian and Portuguese, some representatives of the European Commission’s DG for Employment, Social Affairs and Equal Opportunities and representatives of NG/POs – wanted to defend the specific role, function and consequently legal status of the providers of the services in question rather than discussing the fundamentally different character of the so-called services of general interest (*see not least the works from the [Observatory for the Development of Social Services in Europe \[http://www.soziale-dienste-in-europa.de/Frameset/IxMainFrameset1b96_engl.html\]\(http://www.soziale-dienste-in-europa.de/Frameset/IxMainFrameset1b96_engl.html\)](#)*); on the other hand, ‘economic actors’ emphasised the character of the services as being in principal equal to any other services, not allowing to provide any ‘privileges’ in terms of their provision and with this in terms of their providers.

This rather technical expression meant nothing else than: social or any other services in the so-called general interest have to be seen very much in the way as any other service or commodity and consequently competition law has to be applied. Equally, bringing forward a division between economic and non-economic services did actually not allow making any exemptions. Rather, it highlighted that all services have to be treated in line with the competition law and only very few solely moral relationships could escape such interpretation. In logical consequence, the division between high-

quality services for a minority of economically capable ‘consumers’ and (gradually differentiated) low-quality services for clients, stemming from the lower income strata was technically pre-determined (6).

5. Much of the debate was in consequence taken out of the political realm, concentrating on technical issues of assessing and securing the quality and accessibility of services, looking at tricky legal questions etc. In other words: (a) social services had been substantially degraded and been interpreted as private services – actually an interpretation reflecting very much the self-understanding of many of the providers. (b) As the question was actually not asked properly and the political matter was subordinated under econometric calculations and legal technicalities of competition law. New documents, produced in order to clarify legal issues, lead to ever more legal uncertainty and confusion, clear political statements had been avoided and quality issues had been confused with technicalities of measurement processes and aspects of accessibility had been subordinated under questions of superficial transparency. The production of new documents went hand in hand with the establishment of new expert committees, research work ... – bringing the correct results, but remaining useless as they lacked the correct question.

All this is especially worrying as what is known from the coming communication, due to be published middle of November is not in any way promising. By and large it can be seen as restatement of the points made in the previously published documents.

Participation – the Golden Chains

The Draft Treaty states in respect of *The principle of participatory democracy (Article 8b)* the following:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union’s actions are coherent and transparent.
4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

Taking this from surface value this is definitely a positive fact – and surely, it is as well a positive political statement. The European Disability Forum is the first that already successfully campaigned in this way (see <http://www.1million4disability.eu/>). Another attempt, at the time undertaken under the title SOS Europe (see <http://www.solidar.org/Document.asp?DocID=5059&tod=459>), shows the difficulties of running a campaign.

The two major issues are the following:

- Such campaigns tend to remain very general – and there is the danger of being either too general to have any impact on policy development or to not sufficiently general to

gain support of the many who are not concerned. As well, such campaigns need concrete actors behind them – without being bound to specific actors: more concrete: actors with a specific ideological statement that puts off some of the potential supporters.

This should not be misunderstood: although the process is not all but the reaching the goal is everything, in this case the plastering of the way is already half of it. Or: Establishing broad and sound and honest formation that carries out the campaign is not an end in itself but a crucial step in defining a fine-tuned goal and reaching it.

- With this, initiators have to work on finding an appropriate relationship between accepting the agenda-setting role by the institutional system on the one hand and developing an independent and initializing policy role.

As useful as the strategy is it should not be forgotten that there is as well the danger of employing so much force that there is little left for day-to-day's work. This is in particular important as we can see .

Retreat by Standstill – the Direction of Real Policy

Looking at the three topics raised here – all three very much concerned with core structural issues, crucial for the further European development – the conclusion can only be that the current development is heavily defined by a specific standstill: the consolidation of the competition strategy, bringing intellectual-moral turn and factual market consolidation in tune. It can be said without any overstatement that part of the European Social Model is that it is based on aiming on establishing a soft power against the American wild west: the aggressive character of this version of capitalism does not take the point of departure in the aggressive external policy but an indoctrinating inner colonialisation: At the end, the citizens get the impression they are all themselves bourgeois: The German pattern of the Ich-AG (*see for some principles: <http://www.toytowngermany.com/lofi/index.php/t16946.html>*) seems to be somewhat more dangerous than the American idol of “everybody can make the step from cleaning dishes to being President”. Though many American's feel accordingly as little commanders, the aggressive character is too obvious to be sustainable. On the other hand, poisoning the minds of people with niceties of golden chains seems to be more fruitful: The water still sputters – and it is difficult to make out the deadly spring out of which it comes. Social professions have to be especially alert that they are frequently standing in the middle of a social battlefield rather on a stage of peace negotiations with ISO-norms.

Looking from here on the EU it is not so much the danger of the institutionalised entity; what we see to be more a danger is the fact that we have it in some areas whereas in other areas it remains a playground for experiments, a spring for project financing but lacks a clear political statement beyond well-sounding preambles of ever new Treaties. As well in this sense: Europe has to constitute itself as social entity and process. Maybe social professions can play a more pronounced role here!?

Annotations

(2) Of course, such a formulation lets forget that in actual fact in particular the Convention played a most important role in shaping the debate even after the failure of the ratification process. As well, later this will be further explored, the ‘governance’ plays despite all necessary reservation and qualification a nevertheless somewhat important positive role.

(3) For the legal document and institutional formalities see http://www.unizar.es/euroconstitucion/Treaties/Treaty_Const.htm and

http://www.consilium.europa.eu/cms3_fo/showPage.asp?id=1317&lang=en&mode=g

(4) Mind, even the previous attempt only managed a Treaty establishing a Constitution for

Europe.

(5) There are some interesting data, as well around confidence and 'happiness'. However, the data compiled are not in any way collected beyond a simplistic positivist manner.

(6) So the low quality was not necessary due to the moral engagement, donations ... of charitable organisations.

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