

## **SOME REFLECTIONS ON THE EUROPEAN CONSTITUTION**

**By Peter Grünwald**

Travellers arriving at the airport of Philadelphia can see a gigantic wall showing the first lines of the Declaration of Independence of the United States of America. Philadelphia was the place where this declaration had been discussed and finally was included in the Constitution. Philadelphia is still proud of its part in American history.

The inscription reads:

We hold these truths to be self-evident: That all men are created equal, that they are endowed by their Creator with certain unalienable Rights that among these are Life, Liberty and pursuit of happiness. That to secure these rights Governments are instituted among Men, deriving their powers from consent of the governed....

In the subway on my way to the hotel I began to reflect on the coming Dutch referendum for the European Constitution and I tried to formulate my arguments why I plan to cast a positive vote.

Observing the discussion in the Netherlands, be it pro, be it con, I have come to the conclusion that most of the arguments used are beside the point and that essential items are not dealt with at all.

Below I try to present my arguments:

### Argument (1):

The members of the European Union share a number of basic values which are worthwhile to preserve and to defend. Quite naturally some countries might differ in some details but on the whole there is agreement.

These basic values are:

- A) **Democracy**
- B) **Freedom of opinion and freedom of the media**
- C) **No discrimination** regarding sex, religion, minority status, etc.  
(The European Constitution is the first international treaty in which discrimination of homosexuals is outlawed)
- D) **A guaranteed minimum of education and health service for everybody**
- E) **No death penalty**

These five basic values are explicitly enshrined in the proposed European Constitution.

There are some critics who would like to extend this list, including e.g. environment, care for animals and more.

BUT: Respect for the five basic European values as such is already pretty unique in the world. For instance, points D) and E) are not substantially included in the US Constitution.

Yet the five values are less self-evident than we tend to believe. Moreover laws which guarantee these values could be changed, or even eliminated unilaterally by some states – even in a country like the Netherlands.

Some may consider this possibility “unthinkable.” Later I shall give five examples of “unthinkable” backlashes in recent European history.

These kinds of potential negative developments are less likely if we agree to a common binding document like the proposed constitution. It might be even more critical in the case of some newer or future members who only recently have found their way to genuine democracy.

#### Argument 2:

The new European constitution would eliminate the right to veto in the councils. Presently, each one of the 25 members has veto power in most cases. In that way a smoother and more efficient process would result.

The constitution also creates a European Minister of Foreign Affairs. This is essential if Europe wants to deal with the rest of the world in an active and consistent way.

In my opinion this will become extremely important in the long run if we indeed believe in the five values as mentioned above and would be ready to defend them if necessary.

The European Constitution as proposed is certainly an ugly and much too voluminous document. But rejecting it would mean a back-lash of many years; it could even jeopardize the whole project forever.

It is my sincere conviction that the arguments given above in a nutshell justify a positive vote in favour of the proposed European Constitution.

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Below I shall endeavour to present my arguments in more detail.

First let's consider

#### The Constitution of the United States.

This is one of the most important and influential documents in human history.

Yet when it was introduced it was treated very cynically, mostly by the British, who found it “hypocritical”. Thomas Jefferson, one of the authors, owned slaves, despite the phrase “all men are created equal.”

The Americans treated the Indians in ways which clearly were in conflict with their declared ideals, etc.

A hypocritical text? Surely, at least at the time it was released. But historically seen this text had an enormous influence, not only on the United States but also elsewhere. The point is that this document was, and is, binding for the totality of the United States, that it sets the rules which can be invoked if someone feels that his or her rights have been violated, or when the State offends the principles laid down.

A good case in point from history is freedom of the press which had been explicitly added to the original in 1791. (Before the war the Netherlands was the only country in Europe where freedom of the press was guaranteed.)

The Constitution has also accelerated the abolishment of slavery.

It has helped de-segregation.

Remember the famous case from 1950 of Rosa Parks, a black woman who challenged the segregation in an Alabama bus by sitting down in the part reserved for Whites. She took her case to the Supreme Court and won on the basis of the fact that segregation rules are “unconstitutional”. Segregation in schools has been successfully challenged in the same way. The court ruled in 1954 that “separate but equal” educational facilities were in fact unequal and therefore unconstitutional.

Although there is still quite a bit of discrimination in the Southern States of the US, in total a lot has been achieved during the last 50 years. And 150 years ago in the US the welfare of black people was commonly regarded as worthless.

Presently, nominated by a rather conservative government, the latest and the present US Secretaries of State are black. Moreover the one in office presently is a black woman coming from Alabama who was not allowed to sit near white persons in the bus when she was a child. Mind you, I am talking about perhaps the most influential woman in the world.

In the Fortune 500 list one can find quite a number of black people such as Oprah Winfrey and Eddie Murphy.

What a change in 50 years after 400 years of discrimination!

Thanks to the Constitution the right to vote for women, the law against discrimination of homosexuals and several other positive developments have taken place during the 19<sup>th</sup> and 20<sup>th</sup> century.

The US Constitution was also the catalyst for many positive developments in countries outside, it also has served as a model for other constitutions abroad.

It served as a model for the French Declaration of Human Rights.

## Lessons to be learned and arguments in favour of a European Constitution.

Without doubt, the proposed European Constitution is a voluminous, almost unreadable document. It is crammed with compromises. Its style is inferior to its US counterpart. Yet, I am personally very much in favour of its adoption by way of the referendum because it put down in writing some fundamental European achievements.

There seems to be a tendency to think very lightly about this. But just the simple fact of laying them down will have a very positive influence in the future. Way back in the beginning of the US the Declaration earned a sneer. But, as explained above, the influence it had in the long run cannot be overestimated.

What then would be the positive influences of our constitution in the longer term?

Let us begin with the five basic European values quoted before. They are by far not as self-evident as we tend to believe.

Politicians such as Donner in Holland try to convince people to vote pro by sketching scenarios of catastrophe, speculating on a pending war and so forth if the proposal for the constitution would be turned down. This is nonsense of course.

But it is far from nonsense to suspect that some of the typical European achievements, even in a country like the Netherlands and in others, could very well be turned back. Therefore it makes sense to lay them down in a document which is binding for all European countries. This protects these values in perpetuity.

Let me explain by quoting some examples:

Example 1:

The Constitution makes discrimination on the basis of sexual preferences illegal. This is certainly not part of most Member-States' constitutions.

Unimportant?

Marriage of homosexuals is permitted in the Netherlands, but not in France for instance. If the Constitution is accepted some legal cases could arise in France. They might be lost at first, but I foresee that, as I have mentioned with regard to the United States, these legal cases would continue and would slowly but surely start to make people think twice. This kind of development is important to stimulate change.

Example 2:

The Constitution stipulates that every child in the European Union has the right to get education and that the obligatory part has to be free of charge. (At least if parents are unable to pay)

Example 3:

The Constitution demands a fair and “humane” treatment of animals. There was some criticism in the Netherlands because of the proposed inclusion that the law has to be balanced in view of “local traditions”.

The Spanish would be allowed to have their bull-fights for instance.

Indeed this proposal has its flaws but it’s better than nothing. In most national Constitutions the care for animals is not included at all. This is at least a step in the right direction.

In other cases, one can ask for a more complete and detailed formulation, but to be realistic we have to be ready for compromises and should regard the present proposal as a first step in a process.

After all in many European countries the Dutch policy in the area of euthanasia is regarded as barbarian, even more so than bull-fighting, but the Dutch policy is tolerated.

If you want to develop a European legal framework you have to accept that finally you will end up with the most common denominator. This might not (and perhaps never will) be generally satisfying but it presents a step in the right direction. Whatever our doubts, it contains already much more than is common in the rest of the world.

It has become rather fashionable in the Netherlands to discard the proposal because it does not go far enough .....Environmental groups, animal protection groups etc. are therefore opposed.

But if the Constitution is not accepted then there is practically nothing of that sort laid down.

Shouldn’t we take a first step and trust that it is only the beginning of a longer process?

I repeat: Laying down our principles and values will help to prevent back-lashes with regard to this positive achievement in specific member-states in the future.

Is there any reason to assume these kinds of potential threats are real? In other words:

### **Are our basic values in danger?**

Very much so! We should not forget that in European history quite a lot of positive achievements have been withdrawn often in very brutal ways, while this had been

regarded as out of question by most people before. Just think back 60 years! And 60 years is our very recent past!

Example:

Before World War I it was possible to travel through most of Europe without passport. The elite made frequent and intensive use of these possibilities. The old resorts have been visited by people from all over Europe, and these people in most cases were more fluent in several languages than the contemporary "Europeans".

My grandfather, who was born in Austria and lived in London until 1912, was utterly taken by surprise when WW I started. War between Austria and England?... That possibility had been totally out of the question so far!!

In 1987 several of my friends from school went on a disco-happy –go-lucky vacation in Istria, now Croatia. Not even in their wildest phantasies could they have thought that three years later whole villages in Croatia would be destroyed and the inhabitants murdered.

Another example: In the 1920's homo cafés and restaurants existed in Berlin, the army considered even to except homo-sexuals. Gay people from all over the world came to Berlin because it was the most tolerant city in the world for them. In 1933 Germany became the most intolerant country in Europe. Unbelievable?

To sum up: Many of our achievements which we take for granted are by far not so deeply rooted in our societies as we think. Therefore it seems a good idea to lay them down now and for the future. Even if we have to agree to some compromises and the document we underwrite is not exactly what we really had hoped for.

If we reject the present proposal it might be many years before we can launch another try, if at all.

The need for visionaries:

Suppose that there had been a referendum in 1957 when the European Union was about to be established.

The most important founders in those days were:

Germany, which 12 years earlier had been a murderous dictatorship and had invaded and occupied the Netherlands and other parts of Europe.

France. At that point still a colonial power. The colonies were deprived of voting at all and members of the liberation movement were tortured.

Italy: Also a dictatorship until 12 years earlier, corrupt and poor.

What reason could the Dutch have to join this union, being themselves a model of a stable democracy?

Fortunately there were in all the founding countries politicians with vision and courage who understood that the positive but still vulnerable developments as

freedom of opinion, democracy etc. could better be enhanced and secured by a joint effort than by selfish go-it-alone politics. Indeed a unique and unparalleled development in human history.

### Defending and living up to our values

At present, 50 years hence, we are in a much better position: Almost all of Europe has democratically elected governments and seems to agree on the fundamental human rights as laid down in the European Constitution. But do we really dare to send a meaningful signal to the rest of the world that we seriously back democracy, freedom of opinion, the constitutional state, healthcare and education for everybody?

The answer is actually sadly No.

In the 90's a genocide took place in former Yugoslavia. Was there one country which seriously tried to do something about it? Yes, only one: The United States of America! Had it been up to the Europeans the situation would be still unchanged. Nothing had been done about the situation in Bosnia and Croatia, the latter a country which shortly before had been favourite destinations amongst European tourists.

Tens of thousands of people died. When it became obvious that the situation will repeat itself in Kosovo, the Americans bombed Serbia. During this bombardment several thousand innocent Serbs died. I can remember the discussions with my fellow students. Everybody was against these bombardments. But what happened? Milosevic has been removed and the war in Kosovo was stopped. Total loss of lives: Much less than in Bosnia. Most Kosovars are Muslims, there is absolutely no oil in Kosovo, yet the Americans have acted to help the Kosovars and the Europeans remained onlookers,

Next, the war in Iraq. I was against it like 80% of all Europeans. There seems to be general consensus in Europe, but nobody in the world would listen. Naturally, because we don't have one voice. Because each government tells a different story, consensus amongst their people doesn't amount to anything.

Let me now mention my second argument in favour of the constitution:

Accepting the Constitution means:

- a) The disappearance of the right to veto for the Member States.
- b) The installation of a European Minister of Foreign Affairs.

Both a) and b) are essential in order to make the European Union a more efficient and recognised power.

Couldn't we agree that it would be wonderful if this group of countries which jointly agree on the five basic values spoke with one voice and had a more respected unanimous say in the world.

Europeans are good at criticising the US. But how much right do we have? We tend to disagree amongst us, we sell weapons to the rest of the world and if something goes wrong we point towards the US.

To be sure, I prefer our European values above the American ones, and I am, as said before, convinced that there are specific European values. But what is their value in reality if we do not act when they are in danger or even neglected, when that happens on our own continent? (See Yugoslavia).

In my opinion the elimination of the veto and the creation of a European Minister of Foreign Affairs would together underline the importance we give to our basic values here and in the rest of the world.

How important would this be? Very much so, I am sure!

30 years from now China and not the US will be the most powerful country on the globe.

Consumption in China is now already higher than in the US, the army is being modernized at a fast pace, there are five times as many people, the economy grows three times as fast.

I speculate that, despite Guantanamo and Abu Ghraib and other atrocities, one day we will think back with nostalgia on the times when the US was the super-power, even including the period of Bush.

The upcoming super power China scores badly on all five European basic values. So lets fix them in a mutually agreed upon document, our European constitution. This might help in the future to be able to act more efficiently vis a vis the rest of the world.

The present campaign deals mostly with the "Dutch interests" resp. issues. What is the Dutch interest in the EU, what about the constitution for the Dutch? Maybe not so much in the short term, but on the longer term a Europe which shares altogether our values might be utterly important also for our country. When the first "guest-workers" from Spain and Italy arrived here they were not allowed to enter "dancings" ("e vietato per Italiani" was common in the 50s)

Presently the Spanish have become used to the fact that many Dutch live in their country. Isn't that a gain for both countries? When Franco ruled in Spain the idea to live there seemed more of a nightmare. Why shouldn't the same happen with Poland?

It is difficult to understand for me why you should think exclusively in "our interest." If we really support the five values, then we should cheerfully welcome the idea that they will be embedded in a committing document especially also for those countries who have become democracies rather recently.

Even more so:

Finally:

If we are serious about the fact that our five basic values are great and major achievements we should not hide and hope that they never will be touched from the outside. History teaches us that this is not the way things happen.

On the contrary the best way to defend them is closer cooperation with those countries who share these values.

I believe that despite all necessary compromising the effort is worthwhile and will result into a useful guideline for us and the world. I myself am a strong believer in these values, and I am fiercely convinced that we can better safeguard them and can present them in the world if we Europeans cooperate even closer. I cannot understand people who pay lip-service to these values and forget them as soon as action is required as in Yugoslavia.

I am utterly proud of our values and basic rights and I prefer them above the American ones. But in all my pride I seem to think more like an American than as a European. Frequently I am very critical about the Americans and their international actions. But I admire their will and power for action and courage. If they have the idea that something needs to be done then they act.

This admiration makes me apparently more an "American" than a Dutchman or European. I think the time has come to be more proud of our values and to exchange fear of a super-state for more courage and will for action to spread and support our values.

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May 2005.