CHAPTER 15

A NEW PRAGMATISM: THE ROLE AND IMPACT OF THE EUROPEAN PARLIAMENT IN THE CONSTITUTIONAL TREATY NEGOTIATIONS

Derek Beach

INTRODUCTION

What was the role and impact of the European Parliament (EP) in the negotiation of the Constitutional Treaty (CT)? Often influence can be best measured by its absence. This chapter therefore compares the performance of the EP in the 2000 Intergovernmental Conference (IGC), where it had a negligible impact, with the negotiation of the CT, where it had a major impact. While the 2000 IGC resulted in the modest Treaty of Nice, where the institutional reforms which were the very \textit{raison de être} of the IGC were bungled, the next round of constitutional reform in 2002-04 drafted the CT, which undertook a much more ambitious reform of the EU institutions, including a significant expansion of EP powers and majority voting. While the CT did not involve major \textit{substantive} changes to the Union and its policies, it did mark a major \textit{symbolic} step forward by for example replacing the existing treaties with a single ‘Constitution,’ something that was unthinkable only a few years before.

This chapter argues that the major increase in the level of EP influence that resulted in the more ambitious CT being drafted was due to the change in the negotiating structure from the traditional IGC method to the Convention method, as it created a context that privileged the Members of the European Parliament (MEPs). MEPs then skilfully exploited this window of opportunity during the European Convention in 2002-03 to further their own pro-integrative aims, leading to a more ambitious text than otherwise would have been drafted.

The argument is not that the EP was the only actor that mattered in the negotiations. The choice to create a strong Chair of the Convention and the appointment of Valery Giscard d’Estaing was also important in explaining the achievement of a CT. Furthermore, the outer bounds of the possible within the Convention were dictated by the preferences of governments, as the Convention’s draft had to be approved by the subsequent IGC (Magnette and Nicolaïdis, 2004). Yet within these broad bounds the EP was able to push the outcome towards what can be termed the upper edge of the realistic. In particular, the EP was successful in securing the more symbolic revisions that did not involve major changes in the legal substance of the Union but had significant symbolic value. Examples of EP ‘fingerprints’ include the
decision to draft a ‘Constitution’ replacing existing EU treaties, and the merging of the treaties into a single ‘pillar.’

The argument in this chapter proceeds in three steps. First, the chapter starts with a description of the lack of influence of the EP upon the Treaty of Nice and the many ‘fingerprints’ of the EP upon the CT. Second, the body of the article is a comparative case study of the role and impact of the EP in the 2000 IGC and in the CT negotiations in 2002-04. The EP had a weak observer status in the 2000 IGC, and was not helped by advocating a maximalist strategy. In comparison, the radical change in the rules of the constitutional game in the latest round of reform that drafted the CT had a major impact upon the ability of the EP to influence the proceedings. By gaining representatives in both the plenary assembly and the Praesidium, the EP became a full-fledged player in the negotiations. The use of consensus instead of unanimity shifted the dynamics away from the lowest common denominator towards negotiations marked by coalition building around majority positions. Key MEP representatives also chose a more realistic strategy in the Convention, attempting to push outcomes closer to the upper edge of the realistic, with the result that the CT is arguably littered with EP ‘fingerprints,’ and was a document that was more integrative and ambitious than it would have been if it had been drafted solely by governments.

The Conclusions discuss the findings of this chapter and their implications. It is argued that to understand constitutional politics in the EU, we must look at structure-oriented factors such as how the negotiating context affects the ability of actors to gain influence over outcomes. In the case of the drafting of the CT, the most significant factor in explaining why it differs from the Treaty of Nice was the successful institutional politics prior to the negotiations that ensured that the Convention method would be used instead of the traditional IGC method, creating a context that privileged the EP. Yet possessing a privileged position is not enough. Therefore we must look at the actual behaviour of agents (agency) during the negotiations to determine whether they were able to exploit successfully their position, matching an appropriate supply of leadership with the demands created by the negotiating context.

However the argument that the change to the Convention method resulted in the CT raises an interesting democratic paradox. The Convention method is a more democratic method of treaty reform than has previously been used in the European Union. Yet it will be argued in the Conclusions that the symbolic reforms that were the result of the use of a more democratic negotiating method were also what doomed the CT in national referenda.

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1 The outer bounds dictated by governments were the special ‘exceptions’ for intergovernmental policy—areas such as foreign and security policy.