INTRODUCTION

United Ever More Closely?

> Human wills change, but what is there here below that does not change? The nations are not something eternal. They had their beginnings and they will end. A European confederation will very probably replace them. But such is not the law of the century in which we are living. At the present time, the existence of nations is a good thing, a necessity even. Their existence is the guarantee of liberty, which would be lost if the world had only one law and only one master.
> Ernest Renan (1882)[1]

> One impression predominates in my mind over all others. It is this: unity in Europe does not create a new kind of great power; it is a method for introducing change in Europe and consequently in the world.
> Jean Monnet (1962)[2]

Explaining the European Union (hereinafter "EU") is an exercise fraught with perils. Its precise political and legal nature remains mysterious. To some extent, the EU embodies a baroque and unprecedented supranational entity and its decision-making processes may reveal, at times, some Byzantine characteristics. An American scholar observed that "while [the EU] maintains many of the fixed physical trappings of a state … its genius is its indeterminacy".[3] To paraphrase Jacques Delors, president of the European Commission from 1985 to 1994, this genial "indeterminacy" has produced an unidentified political object with the distressing consequence that it remains an entity difficult to explain and to relate to the layperson. Worse, although political elites realise that their countries need the EU to effectively confront today's challenges, most politicians are reluctant to communicate on European affairs. Indeed, it is always more rewarding to project an image of absolute control over national affairs while shifting the blame to "Europe" whenever it is politically convenient. Unsurprisingly, therefore, the EU offers modern sophists a fertile ground to spread disingenuous opinions without much opposition. The constitutional

[1] E. Renan, "Qu'est-ce qu'une nation", reproduced in G. Eley and R. Grigor Suny (eds), *Becoming National: A Reader* (Oxford University Press, New York, 1996), p 53.
[2] J. Monnet, "A Ferment of Change", (1962) 1 *Journal of Common Market Studies* 203, reproduced in B. Nelsen and A. Stubb, *The European Union. Readings on the Theory and Practice of European Integration* (2nd ed, Lynne Rienner Publishers, London, 1998), p 26.
[3] J. Rifkin, *The European Dream* (Polity, London, 2004), p 229.

debate has revealed, in particular, the continuous strength of the following claims: that the EU is akin to a "superstate" exercising a new dominance from Brussels to the detriment of the Member States' sovereignty, that the EU suffers from a "democratic deficit", and finally, that it embodies either a neo-liberal bias or, alternatively, favours socialist (over)regulation.

Regardless of the merits of these respective claims there is, however, a straightforward explanation for this apparent European desire for originality and complexity. As Jean-Claude Piris points out, "for nearly half a century, the path taken by European integration has not followed any pre-established Cartesian model. It is for political reasons … that the complex system of governance of the EU and its many complicated decision-making rules have been established and refined by its Member States in successive treaties".[4] Among these successive treaties, the two most fundamental ones are the Treaty Establishing the European Community (hereinafter "EC Treaty") and the Treaty on European Union (hereinafter "EU Treaty"). To put it concisely, the EC Treaty is heir to Robert Schuman's Declaration of 9 May 1950, a declaration inspired by Jean Monnet, in which the foreign minister of France calls for a "European federation indispensable to the preservation of peace". Officially signed in Rome in 1957, the EC Treaty (also known and referred to as the Treaty of Rome[5]), set up the rules governing what was then known as the European Economic Community (hereinafter "EEC") and the European Atomic Energy Community. In 1993, the Member States decided to rename the EEC the European Community (hereinafter "EC"). Dropping the word "economic" was seen as a symbolic step to mark the expanding role of the Community beyond the economic field.

As is well known, Ireland had to wait until 1973 to secure membership of the EEC. The Irish application had been blocked for several years along with the British one, due to the French President's opposition. Charles de Gaulle feared that the United Kingdom would try to undermine European integration from within and would simply act as a Trojan Horse for American interests. As it happens, the European project lost momentum following the British and Irish accessions up until the mid-1980s, but this was surely a coincidence. Then, under the leadership of Jacques Delors, the European Commission launched a campaign to complete a genuine European internal market by the end of 1992 which gave a new impetus to the EC. More fundamentally, the signature of the EU Treaty in Maastricht, also in 1992, marked a new ambitious step towards closer integration as this Treaty not only paved the way for the creation of the Euro but also established a new

[4] J.-C. Piris, "Does the European Union have a Constitution? Does it need one?", *Harvard Jean Monnet Working Paper* 5/00, p 60. This study is available at: http://www.jeanmonnetprogram.org/papers.

[5] Technically speaking, two Treaties were actually signed in Rome in 1957: The Treaty establishing the European Economic Community (EEC) and the Treaty establishing the European Atomic Energy Community (EURATOM). It has become customary, however, to refer to the sole EEC—which became known as the EC Treaty in 1992—as the "Treaty of Rome".

"creature", the European Union, whose main purpose was to improve intergovernmental co-operation in foreign affairs, defence, justice and home affairs.

One should note that, technically speaking, the EC and the EU are not the same thing. As the current EU Treaty puts it, in a somewhat opaque manner: "The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty".[6] This division between the EC and the EU is, however, artificial in practice. It has become common practice merely to refer to the EU even though, strictly speaking, the EC Treaty and the EU Treaty offer two distinct sets of legal rules with different legal effects. Realising, *inter alia*, that these two Treaties offer "a confusing and incoherent mess",[7] the Member States acknowledged in 2001 that the Treaty of Nice fell short of simplifying the current legal framework.[8] The drafters of the "EU Constitution" sought to achieve this result by repealing the EC Treaty and EU Treaty and replacing them with a new text. As we shall see, the decision to abandon the constitutional text in June 2007 unfortunately means that the present Treaties will continue to remain in force. Indeed, the Member States agreed that a new Treaty, initially branded as the "Reform Treaty" but subsequently referred to as the "Lisbon Treaty", will not merge into one new text but "merely" amend them.[9] In conformity with the aborted text, however, the Lisbon Treaty grants exclusive legal personality to the "Union" which shall replace and succeed the European Community. The expression "European Community" will therefore be replaced by "European Union" throughout the Treaties. This also explains the decision to rename the EC Treaty the Treaty on the Functioning of the European Union. Before assessing further the scope of the Lisbon Treaty, it is imperative to understand why the idea of a European Constitution proved to be so controversial and whether the strident criticism it gave rise to was completely justified.

The formal title of the defunct "EU Constitution" is the Treaty Establishing a Constitution for Europe. In Ireland and in the United Kingdom, the dominant term—Constitutional Treaty—is a slightly different one. This is actually in line with what the former French President Valéry Giscard d'Estaing argued for in his first speech as President of the Convention on the Future of Europe (known as the European Convention), the ad hoc body in charge of drafting a possible constitutional text from 2002 to 2003. Emphasising the ambitious goal of the European Convention: to open the way towards a

[6] Article 1 TEU. It is important to note that references to EU Treaty articles and to EC Treaty articles are respectively made in the form "Article … TEU" and "Article … TEC".

[7] D. Chalmers *et al.*, *European Union Law* (Cambridge University Press, Cambridge, 2006), p 41.

[8] See Treaty of Nice: Declaration on the future of the Union, [2001] OJ C80/85.

[9] References to new EU Treaty articles and to EC Treaty articles as amended or inserted by the Lisbon Treaty are respectively made in the form "new Article … TEU" and "new Article … TEC". Although the EC Treaty will be eventually renamed the Treaty on the Functioning of the European Union (TFEU), the abbreviation TEC will nevertheless be used for the sake of clarity.

Constitution for Europe, he recommended that, "in order to avoid any disagreement over semantics", the new text should be called a Constitutional Treaty for Europe.[10]

One may ask: does it really matter whether the text is called a constitution or a constitutional treaty? Undeniably, the quarrel over semantics is fought, above all, for symbolic political purposes. This does not mean that the quarrel is unimportant.[11] To some extent, eurosceptics are not entirely wrong when they fear that the use of the word "constitution" may lead to accepting the idea that the EU should be treated as some sort of federal state. Were the term "constitution" to be widely accepted, the legitimacy and authority of the European legal order would be considerably strengthened. This is why Michael Howard, former Leader of the UK Conservative Party, vehemently argued that only countries had constitutions. It is important, however, to understand that "for decades it has been commonly understood that, despite its formal treaty format, the structural architecture of the Communities and subsequent Union were better explained with a constitutional vocabulary than with that of international law".[12] In a famous opinion, the European Court of Justice bluntly stated that the EC Treaty "albeit concluded in the form of an international agreement, none the less constitutes the constitutional charter of a Community".[13] This use of constitutional terminology has proved controversial ever since. It is yet entirely reasonable to contend that the EC/EU has, since its origin, been operating on the basis of what may be described as a constitutional text.

Numerous studies have discussed the differences between a constitution and a treaty.[14] In a few words, a constitution is typically understood as the fundamental law with supreme legal force which lays down the rules governing the organisation and exercise of state power as well as the fundamental rights of the citizens. Furthermore, according to orthodox constitutional theory, however, the concept of constitution relates, in principle, only to states and the making of a constitution is usually understood as an act of sovereign self-determination. Accordingly, until the time comes when a European treaty is put to the peoples of the Member States for direct approval in a European-wide referendum, a proper European "constitution" cannot emerge. This was certainly the case with the

[10] See Secretariat of the European Convention, Speeches delivered at the inaugural meeting of the Convention on 28 February 2002, Brussels, 5 March 2002, CONV 4/02, Annex 4, p 20.

[11] See e.g. the insightful analysis of M.P. Maduro, "The Importance of being called a constitution: Constitutional authority and the authority of constitutionalism", (2005) *International Journal of Constitutional Law* 357.

[12] J. Weiler, "On the power of the Word: Europe's constitutional iconography" (2005) 3 *International Journal of Constitutional Law* 173, at 176.

[13] Opinion 1/91, [1991] ECR I-6079, para 21. See also Case 294/83, *Les Verts* [1986] ECR 1339, para 23.

[14] For two concise yet informative studies, see P. Eleftheriadis, "Constitution or Treaty?", *The Federal Trust Online Paper* 12/04, July 2004 (available at: http://www.fedtrust.co.uk/eu_constitution); L. Diez-Picazo, "Treaty or Constitution? The Status of the Constitution for Europe", in J. Weiler and C. Eisgruber (eds), *Altneuland: The EU Constitution in a Contextual Perspective*, Jean Monnet Working Paper 5/04 (available at: http://www.jeanmonnetprogram.org/papers).

Constitutional Treaty. To enter into force, national ratification in all the Member States was required, in the same way as any other European treaty. In my view, however, the term "constitution" does not necessarily refer to a unique and hierarchically superior legal instrument if we consider, for example, the distinctive experience of the United Kingdom. As is well known, the absence in the United Kingdom "of a constitution in the form of a written single document with special overriding status"[15] has not led British lawyers to conclude that they lack a constitution. Accordingly, the EU can be said to already possess a constitution as both the EC Treaty and EU Treaty offer a set of justiciable written rules that define the main organs of government and powers, are viewed as superior law and can only be amended by special procedures.[16] Similarly, although the Constitutional Treaty did not obviously pursue the objective of giving birth to a new and sovereign state entity, it included some characteristic and decisive components of any constitution. For instance, it clearly organised the government of the entity to which it applies and it also guaranteed human rights. As far as substance is concerned, the comparison with the constitution of a state appeared therefore relevant. This understanding of the concept of constitution may not fully satisfy orthodox constitutional theory but it explains why this book can be entitled "the European Union and its Constitution", regardless of the tragic fate of the 2004 "EU Constitution", the story of which will now be briefly addressed.

The idea of a formal constitution for the EU was first seriously discussed in policy and academic circles during the 1980s.[17] The political debate on the subject is more recent, beginning essentially in 2000 with the speech made by the German Foreign Minister Joschka Fischer, where he called for a European constitution modelled on the German Constitution.[18] This led to the Laeken Declaration of December 2001,[19] in which EU leaders agreed to call for a Convention on the Future of Europe to draft a text with the obviously laudable aims of making the EU more democratic, more transparent and more efficient. Three basic challenges were also identified: how to bring citizens closer to the European design and the European institutions, how to organise politics in an enlarged Union and how to develop the Union into a stabilising factor and a model in our world.

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[15] P. Birkinshaw, "Constitutions, Constitutionalism and the State", (2005) *European Public Law* 31 at 33.

[16] P. Craig, "Constitutions, Constitutionalism, and the European Union", (2001) 7 *European Law Journal* 125 at 127.

[17] See in particular the "Spinelli initiative" which led to the adoption of a *Draft Treaty on European Union* by the European Parliament in 1984 (OJ C77/33). Altiero Spinelli is the founder of the European Federalist Movement and a former Commissioner.

[18] See J. Fischer, "From Confederacy to Federation: Thoughts on the Finality of European Integration", in C. Joerges, Y. Mény and J. Weiler, *What Kind of Constitution for What Kind of Polity? – Responses to Joschka Fischer* (European University Institute, 2000), p 19.

[19] See European Council of Laeken, Presidency Conclusions, 14–15 December 2001, Annex I: Laeken Declaration on the future of the European Union, in *Bulletin of the European Union* 2001, No 12, pp 19–23.

The European Convention, composed of members representing all the relevant parties,[20] adopted a draft Constitution on July 2003 and presented it to the European Council, i.e. the EU institution which brings together the Heads of State or Government of the Member States and the President of the Commission.

Despite what some critics have suggested,[21] this "Convention method" was certainly not undemocratic. In fact, it achieved new levels of openness and inclusiveness in comparison with previous procedures used to prepare other European treaties. Furthermore, all significant viewpoints were represented. Noel Treacy, then the Irish Minister for European Affairs, was right to point out that the Convention was, in reality, an unprecedented "open exercise, bringing together for the first time public representatives from across the full spectrum of European opinion. This is quite apparent from a glimpse at the Irish membership: John Bruton, Dick Roche, Pat Carey, John Gormley and Proinsias De Rossa—a broad church by any reckoning".[22]

Criticism appears particularly absurd when one compares the drafting of the EU Constitutional Treaty with the ways national constitutions were elaborated. It would certainly be difficult to argue, for instance, that the Irish Constitution, Bunreacht na hÉireann, was widely debated and open to amendments from all political forces and civil society in the period 1935–1937, despite the fact that it was narrowly approved in a plebiscite. Similarly, in France, the drafting of constitutional texts—and the French have had more than sixteen in two centuries—has always been an exercise conducted in relative secrecy with the citizens only involved at the ratification stage. Finally, regarding the EU Constitutional Treaty, one should note that the text submitted by the European Convention was not legally binding on the Member States. Democratically elected Heads of State or Government of the Member States had the final say on the Constitutional Treaty. And indeed, in order to secure a consensual agreement between the Member States, the draft Constitution submitted by the European Convention had to be amended extensively. Once these amendments were formalised, the Treaty Establishing a Constitution for Europe was officially signed by the Member States in Rome on 29 October 2004.

Some have regretted that the Constitutional Treaty was unlikely to be popular bedtime reading among Europe's citizens. It would seem, however, quite challenging to find anyone

[20] The European Convention brought together representatives of the governments of the 15 Member States and the 13 candidate countries, representatives of their national parliaments, representatives of the European Parliament and of the European Commission, 13 observers from the Committee of the Regions and the European Economic and Social Committee, plus representatives of the European social partners and the European Ombudsman.

[21] See e.g. Mary Lou McDonald, MEP, Sinn Féin National Chairperson, Letters Section, *The Irish Times*, 7 April 2005.

[22] Letters Section, *The Irish Times*, 8 April 2005.

who would read one's own national constitution for relaxation and yet such constitutions can be legitimate and effective. More seriously, it was often claimed that the Constitutional Treaty is both too long and too obscure.[23] By contrast, the US Constitution is presented as the model which Europeans should emulate. To quote a characteristic utterance, Jack Straw has suggested that "size is important" and that "the smaller the better when it comes to constitutions".[24] It may be worth discussing the aesthetic attributes of the Constitutional Treaty in more detail as it offers a good example of double-standard and constitutional ignorance, unfortunately two typical features of any popular discussion on the EU.

Although it is a familiar practice among common-law authors, comparing the EU Constitutional Treaty with the US Constitution is defective. The American document was written more than two centuries ago. Its founding fathers were obviously not faced with the same challenges as Jean Monnet or Paul-Henri Spaak when creating an institutional structure based on shared sovereignties and market integration. Furthermore, one may argue that the "pocket-size" of the US constitution has left the US Supreme Court with no choice but to be judicially creative in order to cope with the evolution of American society. Undeniably, with 448 Articles, the EU Constitutional Treaty was not a short one. This simply reflects the Member States' insistence on maintaining the strictest control over the evolution of law-making at EU level. In other words, the Member States wanted the Constitutional Treaty to be extremely detailed because they wanted to control exactly how much competence they gave to the EU and how much power they gave to its institutions to exercise these competences.[25] Yet, when compared with modern constitutions of federal states such as Germany (146 articles) or India (395 articles), the Constitutional Treaty did not appear excessively long. Furthermore, commentators tend to forget that constitutional texts are often accompanied by certain laws of constitutional value, which detail, precisely, the manner in which specific provisions of the constitution should be applied. For instance, the French Constitution is rather short (89 articles) but its content is further specified by several comprehensive "organic laws". True, European Treaties are already accompanied by a series of legally binding Protocols but one may argue that this practice should have been further developed.

Certainly, the EU would benefit from offering citizens a more concise basic law, setting aside all provisions dealing with process (e.g. the provisions governing the adoption of the

[23] The Constitutional Treaty is split into four parts. Part I details the new institutional framework of the Union in about 60 articles. Part II incorporates the European Charter of Fundamental Rights "proclaimed" in Nice in December 2000. Part III contains the detailed provisions on policy and procedure for many of the articles in Part I. Part IV contains the usual technical provisions that deal with details regarding the entry into force of the agreement and the repeal of previous agreement(s). In total, the Constitutional Treaty offered a long but nonetheless legible single text of 448 articles, to compare with the current Treaties, the EU Treaty and the EC Treaty, which respectively consist of 53 articles and 314 articles.

[24] J. Straw, "A constitution for Europe", *The Economist*, 10 October 2002.

[25] J.-C. Piris, *The Constitution for Europe* (Cambridge University Press, Cambridge, 2006), p 59.

EU's annual budget) in protocols and/or organic laws. The Constitutional Treaty was still quite an improvement compared to the current European Treaties. Although, as Peter Norman put it, it is doubtful whether this text "would appeal, as Giscard hoped, to the average intelligent secondary school pupil",[26] he conceded that "the constitutional treaty has a beginning, a middle and an end that an ordinary mortal can follow".[27] To that effect, the text's Preamble and the first eight articles defining and setting out the objectives of the EU can be read and understood without difficulties, and compare well with national constitutions. Regardless of its alleged complexity, one must understand that it is precisely because the EU is not a federal state that it needs a relatively more complicated set of rules. This is precisely what Jack Straw finally realised in 2004:

> "Here lies a paradox about the EU, and also the root of our collective ambiguity towards it. Were it a superstate, writing its constitution would be easy, and the result short. … It is precisely because the EU is not a superstate that it needs a more complicated rule-book spelling out, policy by policy, the areas of its competence."[28]

Notwithstanding its aesthetic merits, the Constitutional Treaty has been denounced, quite intriguingly, by eurofederalists and eurosceptics alike. Irrespective of one's theoretical point of view on the desirability of a formalised constitution for the EU,[29] the Constitutional Treaty, while offering innovative improvements to the current institutional framework and promising to make the EU more manageable and more accountable, did not offer radical changes. It did, however, clarify the EU's values and what role the EU should play in the world.[30] In the end, it seems legitimate to argue, as one well-advised commentator observed, that "while the plot and the set may look impressive, the play itself is not revolutionary".[31] This is why, in most instances, British eurosceptics appeared to be so widely off the mark when they denounced the imminent arrival of a European Leviathan. In reality, European federalists should have been the ones disappointed with the Constitutional Treaty. But as Lord Kerr, former secretary general of the European Convention, contended:

> "Those who would have wished for something more far-reaching, perhaps a real 1787 founding Constitution rather than another Treaty among sovereign states, need to

[26] P. Norman, *The Accidental Constitution. The Making of Europe's Constitutional Treaty* (2nd ed, EuroComment, Brussels, 2005), pp 315–316.
[27] *ibid.*
[28] J. Straw, Charlemagne, *The Economist*, 8 July 2004.
[29] See in particular the original views developed by J. Weiler, "In defence of the status quo: Europe's Constitutional *Sonderweg*", in J. Weiler and M. Wind (eds), *European Constitutionalism beyond the State* (Cambridge University Press, Cambridge, 2003), p 7.
[30] See G. de Búrca, "The Drafting of a Constitution for the European Union: Europe's Madisonian Moment or a Moment of Madness?", (2004) 61 *Washington and Lee Law Review* 555.
[31] K. Nicolaïdis, "Our European Demoi-cracy. Is this Constitution a Third Way for Europe?", in K. Nicolaidis and S. Weatherill (eds), *Whose Europe? National Models and the Constitution of the European Union* (Oxford University Press, Oxford, 2003), p 137.

beware of letting the best become the enemy of the good. … And Treaty form means that the slowest ship sets the convoy's pace. That's life."[32]

The great irony, therefore, is that the Constitutional Treaty was "in fact a Eurosceptic constitution, entrenching the status quo, though the Eurosceptics seem too short-sighted to have noticed it".[33]

As is well-known, the French "Non" and the Dutch "Nee" in 2005 proved ultimately fatal to the Constitutional Treaty. At the Brussels meeting of the European Council in June 2007, the Member States finally agreed "that, after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on".[34] In other words, it was agreed to abandon the "constitutional concept" and to convene an inter-governmental conference, i.e. a group consisting of a representative of each of the Member States' governments,[35] to draw a new Treaty which will amend the two existing Treaties. This was a difficult decision to make considering the fact that 18 countries—representing already a *majority* of the Member States and of the EU population—had already ratified the Constitutional Treaty.[36] From a legal perspective, however, the rules governing the entry into force of the Constitutional Treaty were clear-cut: unanimous ratification was still required for this text to enter into force. Such unanimity, no matter how practically absurd in a union of 27 Member States, is actually the clearest indication that the Member States continue to retain the entirety of the *pouvoir constituant*, the supreme power to decide one's own constitutional arrangements.

The "period of reflection"[37] that the Member States agreed to in June 2005 thus led to the demise of the constitutional project. As advocated by Nicolas Sarkozy in 2006, before he became the President of France, the new Lisbon Treaty—also known as the "Reform Treaty"—will merely amend the existing Treaties and not replace them. However, contrary to his suggestion to adopt a "mini-treaty" of 10–15 articles,[38] the Lisbon Treaty will dramatically amend the EU Treaty and EC Treaty. Indeed, to the palpable satisfaction of those countries reluctant to completely discard the Constitutional Treaty, the Lisbon

[32] J. Kerr, "Best on offer", EU Constitution Project Newsletter, The Federal Trust, July 2004, p 10.
[33] V. Bogdanor, "A Constitution for a House without Windows", EU Constitution Project Newsletter, The Federal Trust, July 2004, p 6.
[34] European Council of Brussels, Presidency Conclusions, 21–22 June 2007, Doc No 11177/07, 23 June 2007, p 2 (available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf).
[35] One representative of the European Commission and three representatives of the European Parliament will also be involved in the work of the inter-governmental conference.
[36] Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Romania, Slovakia, Slovenia, Spain.
[37] See e.g. A. Duff and J. Voggenhuber, MEPs, *Report on the period of reflection: the structure, subjects and context for an assessment of the debate on the European Union*, European Parliament, A6-0414/2005, 16 December 2005.
[38] N. Sarkozy, "EU reform: What we need to do", *Europe's World*, Autumn 2006, p 56.

Treaty retains most of its innovative provisions. In the much-quoted words of Irish Prime Minister Bertie Ahern, "90 per cent of it is still there".[39] This explains why eurosceptics continue to oppose the new text on the ground that the Lisbon Treaty is the EU Constitutional Treaty in all but name.

The most significant departure from the Constitutional Treaty is indeed the abandonment of the word "constitution". As Andrew Moravcsik judiciously observed in June 2005 :

> " … the central error of the European constitutional framers was one of style and symbolism rather than substance. The constitution contained a set of modest reforms, very much in line with European popular preferences. Yet European leaders upset the emerging pragmatic settlement by dressing up the reforms as a grand scheme for constitutional revision and popular democratisation of the EU."[40]

With the benefit of hindsight, it is clear that the use of the word "constitution" was not a sensitive choice, not only because the term constitution is (though erroneously) synonymous in the mind of most voters with intangibility, therefore dramatising the debate, but also because it spectacularly raised expectations. And these expectations could only be dashed by the reading of a document of 448 articles which did not revolutionise the nature of European integration and did not fundamentally alter the complexity of its current decision-making process. This diagnosis has now been accepted by the Member States.

The agreement found in the Lisbon Treaty, however, came at a price. Instead of the promised "simplified" Treaty, the new Treaty, as liberal MEP Graham Watson noted in June 2007, "reads like the instructions for building a Japanese pagoda translated into English by a Chinese middle-man".[41] To use another popular diagnosis, the Lisbon Treaty has been compared to a "treaty of footnotes". The description is not entirely warranted as it is based on a reading of the mandate agreed by the European Council at its Brussels meeting on 21–22 June 2007. This mandate guided the work of the inter-governmental conference which was in charge of drawing up a full-fledged Treaty before the end of 2007. Yet it was already clear from this mandate that the new Treaty was not going to ease the citizens' understanding of the EU. On the contrary, the Lisbon Treaty multiplies pointless or incomprehensible declarations and protocols as well as the number of areas where some Member States, i.e. the United Kingdom and Ireland, could "opt-out" from the adoption and application of EU law. It is more than a little ironic that previous critics of the

[39] Editorial, "Constitution no more", *The Irish Times*, 25 June 2007.
[40] A. Moravcsik, "Europe without illusions", *Prospect*, July 2005, p 22.
[41] European Parliament, Debate on the EU summit and Germany presidency, Press release IPR08363, 27 June 2007.

Constitutional Treaty now find it an "easily understandable"[42] text by comparison to the new Treaty.

Without a doubt, the Lisbon Treaty is unlikely to make the EU more transparent and bring it closer to the citizens. It only partially fulfils the four objectives announced in the 2001 Declaration on the future of the Union and which were: (1) to establish and monitor a more precise delimitation of powers between the EU and the Member States, reflecting the principle of subsidiarity; (2) to clarify the status of the EU Charter of Fundamental Rights of the European Union; (3) to simplify the Treaties with a view to making them clearer and better understood without changing their meaning; (4) to improve the role of national parliaments in the European architecture. Arguably, the Lisbon Treaty only satisfies the second and fourth objectives. The depressing truth is that the Constitutional Treaty, by contrast, offered an answer to all of them.

Although the Constitutional Treaty is now officially abandoned and the Lisbon Treaty not yet ratified, this book will extensively examine their provisions and compare them to the rules currently in force with a view to addressing all the major and prevalent "constitutional" controversies previously identified: the superstate argument, the democratic deficit accusation and the EU's alleged ideological bias. It will be argued that the EU is not and should not become a state (Part I) and that the treatment of the EU as a democratically deficient entity is misguided (Part II). It will also be contended that the EU legal framework is neither neo-liberal nor socialist, but offers a balanced framework which does not pre-empt the political direction of EU legislative intervention (Part III). Generally speaking, one should note that this book's objective is not to propose reforms, but rather to clarify what ought to be the terms of the debate while highlighting the inconsistencies of Eurocritics. Indeed, before suggesting reforms, a correct diagnosis should be articulated.

[42] Jean-Claude Juncker, Prime Minister of Luxembourg, quoted in Editorial, "Constitution no more", *The Irish Times*, 25 June 2007.