Review Essay – Bruno de Witte's *Ten Reflections on the Constitutional Treaty for Europe*

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[Bruno de Witte (ed.), *Ten Reflections on the Constitutional Treaty for Europe*, Florence: RSCAS and Academy of European Law, 2003, 225 pages, softback]

A. Introduction[1]

The European University Institute (EUI) has long been involved in the European constitutional debate. As this debate has been gaining momentum over the last few years, the Institute's Robert Schuman Centre for Advances Studies has produced a series of important publications on the topic. Since 1999, every year has seen an addition to the debate from EUI academics. Whether in the form of articles, policy papers[2] or books[3], these publications have become important and respected contributions to the ongoing 'constitutional deliberation'. 'Ten Reflections on the Constitutional Treaty for Europe' is the latest addition to this tradition.

As the title implies, the book is comprised of ten chapters, each dealing with an important area of law within the future Constitution. The aim of the book is not to draft a 'fully-fledged' Constitution for Europe. The authors aspire, by their own admission, rather to influencing the policy-making process surrounding the draft-

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[1] http://www.iue.it/RSCAS/e-texts/200304-10RefConsTreaty.pdf

Please note that the footnotes in this review refer to page numbers in the printed book and not in the online version.

[2] *See*, 'Series on Constitutional Reform of the EU', http://webdb.iue.it/FMPro

[3] *See*, Amato, G., and H. Bribosia, 1999: 'Quelle chartre constitutionelle pour L'Union Europeenne? Strategies et options pour renforcer le caractere constitutionnel des traites.', Florence: RSCAS; Joerges, Ch., Meny, I., and J.H.H. Weiler (eds.), 2000: 'What Kind of Constitution for What Kind of Polity? Responses to Joschka Fisher', Florence: RSCAS; and Ehlermann, C-D., Meny, Y. and H.Bribosia,

2000: 'A Basic Treaty for the European Union. A study of the reorganisation of the treaties', Florence: RSCAS.

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ing. The contributions fall into two main categories: those chapters dealing mainly with institutional design and the chapters devoted to policy-related issues, such as External Relations and Freedom, Security and Justice. Given that the majority of the contributions fall within the former category, and that the two policy-oriented chapters by Griller and Walker deal with issues examined in other chapters, this review is highly selective in those chapters it examines.[4]

This review is structured as follows: firstly, an assessment of the arguments presented in those chapters deemed most interesting is presented, followed with a critical overview of the book as a whole.

B. Constitutional Reflecting

I.

In the first chapter, Armin von Bogdandy, Director at the Max Planck Institute for International Law in Heidelberg, considers the role of the Preamble, providing a detailed and complete proposition of his own, dealing with all the important aspects of the first, and most telling, part of any Constitution: the motivations behind the adoption of a Constitution, the overall aim of the polity in question, the vital principles guiding the political community establishing the Constitution and the tasks it sets itself. The chapter is well written and to the point and von Bogdandy succeeds in presenting the reader with a short, concise yet complete Preamble.

Von Bogdandy's Preamble proposition goes a step further than that of the Convention, however, in recognising the people as the constituent power: "in democratic societies the enactment and amendment of a Constitutional text is largely understood as an act of *auto*-determination. […] the *pouvoir constituant* in the Union lies with the European Peoples collectively. So they should speak directly."[5] He is also aware of the limits of the debate, though, and his last sentence talks, rather disappointingly, of a 'Treaty on a Constitution for the European Union'.[6]

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[4] We perceive the chapters on the preamble, the fundamental rights and citizenship and flexibility to fall somewhere in between the two abovementioned categories. One could argue that these are chapters dealing with main principles informing the Treaty, and therefore, with its material content. Yet we think they should be analysed within the limits of this review as they clearly influence the formal dimension of the Treaty.

[5] TEN REFLECTIONS ON THE CONSTITUTIONAL TREATY FOR EUROPE, 4-5. The proposal made by the European Convention concludes the preamble in the following manner: 'Grateful to the members of the European Convention for having prepared this Constitution on behalf of the citizens and States of Europe'.

[6] *Id.*, at 10

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Moreover, although the author presents us with a comprehensive Preamble, he does not explore further the ongoing debate on the Preamble's reference to God and religion in the text. While he certainly acknowledges the problem ("This issue might become an important battleground"[7]) his own solution, a general reference to the responsibility of the Constitution makers to future generations, could well have profited from additional discussion of such an important issue.

II.

In her chapter headed 'Fundamental Rights and Citizenship', Gráinne de Búrca deals with the incorporation of the Human Rights Charter into the constitutional text and the Charter's possible influence on the definition of European citizenship.[8] The author discusses at length and in detail the possible modes of incorporation of the Charter into the Treaty and concludes by advocating the incorporation of the Charter, along the lines indicated in the Penelope draft[9], in Part II of a three-part Constitutional Treaty[10], while noting that such an incorporation could restrict "the normatively open *aquis*"[11] on fundamental rights and thus suggests in addition the adoption of a clause affirming the openness of the *aquis*.

The real value of the chapter lies in the author's discussion of the legal problems inherent in the Convention's Working Group II amendments to horizontal clauses of the Charter: the influence of the Charter on the EU legal and political order, 'the soft-harmony' between national constitutional rights and the rights expressed in the Charter, the division between principles and 'subjective rights' and the respect of national laws and practices specified by the Charter. This discussion leads de Búrca to a number of oft- suggested recommendations enhancing rights protection for the individuals of the European Union.

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[7] *Id.*, at 6.

[8] For an article detailing the available options for incorporation of the Charter, *see*, Michiel Brand, *Towards the Definitive Status of the Charter of Fundamental Rights of the European Union: Political Document or Legally Binding Text*, 4 GERMAN LAW JOURNAL No. 4, pp. 395-409 (1 April 2003), available at: http://www.germanlawjournal.com/article.php?id=261.

[9] The Penelope Draft was a constitutional feasibility study produced at the request of the President of the Commission by Commissioners Barnier and Vittorino and published on 4th December 2002. It was a detailed document of 178 pages and is widely accepted to reflect the Commissions' views on the constitutional debate

[10] TEN REFLECTIONS, at 20.

[11] *Id.*, at 16.

Firstly, she concurs with a number of human rights experts that a provision the constitutional treaty requires explicit provision for accession by the EC/EU to the European Convention on Human Rights; secondly, that provision be made for a less restrictive *locus standi* for individuals before the ECJ by amending art. 230 of the EC treaty; thirdly, she suggests the inclusion of a human rights integration clause, similar to Articles 3(2) and 6 of the EC Treaty on gender equality and environmental protection; and fourthly, that "protection for human rights be specified as an objective of the EC/EU."[12]

De Búrca's recommendations are nonetheless bold in their specificity, clearly suggest a constitutional understanding of the Convention Treaty and, at the same time, serve to bridge the gap between the existing legal order and the more normative constitutional order under construction.

III.

Stephen Weatherill, of the University of Oxford, deals with the problem of the division of competencies between the EU and the Member States. The author claims that the time is here for a more systematic overall basis for determining competence allocation, even if "the vitality of the existing array of devices as means for tackling the 'problem of competencies' has been underestimated".[13] Weatherill holds a rigid division of competencies between the Union and the Member States to be damaging, robbing the system of the necessary capacity for dynamism and adaptability, and misleadingly portraying the relationship between the Union and the Member States as confrontational. Such a formula is, according to the author, not equipped to deal with the complexity of the issues at stake.

Drawing on the existing system of competence division, the author proposes that the bulk of competencies be shared between the Union and the Member States, either in the form of concurrent, parallel or complementary competencies. The Union should enjoy exclusive competence only under exceptional circumstances, and these competencies should be conferred on it by the Constitutional Treaty. Subsidiarity, proportionality and co-operation should operate as guiding principles for the allocation of competencies. Finally, a flexibility clause should be added to the new treaty, stating that if Union action is needed to attain one of the objectives of the Union and the Treaty does not provide the Union with the necessary competence,

[12] *Id.*, at 25-27.

[13] *Id.*, at 51.

then it should be permitted to act following a legislative procedure involving Parliamentary approval plus unanimity in Council.[14]

The proposed division of competencies seems to be inspired by a fear of excessive rigidity of the system. The author suggests that "the relationship between different levels of governance typically fluctuates over time in all divided-power systems that currently exists or have existed" and that consequently, "there is no reason to suppose that the EU is, or should be, any different in that respect."[15]

However, if we agree with the author's statement that the existing system is underestimated, it is not a given that a clear-cut division of competencies would rob it of dynamism and adaptability. It can be argued, that in the case of a clear-cut division of competencies, the interpretative competence of the ECJ and of national courts would safeguard the system from excessive rigidity.[16] Moreover, a confrontational portrait of the relationship between different tiers of government cannot be automatically assumed to be the result of a clear-cut division of competencies. In fact, it can be argued that the proposed clear-cut division of competencies is a response to the already perceived confrontational relationship between the Union and the Member States. If the confrontational relationship already exists, then the devices designed to balance the allocation of competencies between the Union and the Member States would alleviate the problem and not deepen it as the author claims.

Assuming further that the image of confrontation is untrue, the clear-cut division of competencies has additional added value when compared to the author's proposals of a relatively flexible competence sharing formula. As, according to the author, under the present system, it is "fiendishly [difficult] to convey to citizens […] who is in charge"[17], the clear-cut division of competencies would spell precisely that out at a smaller information cost than his proposed clarification of the present complicated system.

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[14] *Id.*, at 60.

[15] *Id.*, at 66.

[16] *See*, Art. I-28.3, Art. III-266, and Art. III-277 of the Convention's constitutional proposal, http://european-convention.eu.int/docs/Treaty/cv00797-re01.en03.pdf and

http://european-convention.eu.int/docs/Treaty/cv00725.en03.pdf. The authors acknowledge the possibility of a clear-cut definition of competencies producing system stagnation through an overloading of the ECJ with cases pertaining to the interpretation of the division of competencies. However, this should only be a short term problem. Moreover, the long term benefits of dividing competencies outweigh the potential problems. A clear-cut division of competencies would reduce information costs, would reduce institutional uncertainty and, last but not least, would improve political accountability.

[17] TEN REFLECTIONS, at 47.

It should be noted as a final remark that extending the flexibility approach to permit the Union to fulfil its objectives outside the competencies provided by the Treaty can be interpreted as a step towards a more federalist approach to the division of competencies. The flexibility clause recognises the fact the Union is an entity with its own objectives and aims, therefore a polity in its own right, separated from those of the Member States.[18]

A recognition of the normative potential of flexibility is at the base also of Jo Shaw's contribution.[19] According to Shaw, views on flexibility can be divided along two main axes: the pragmatic/political axis and the normative axis (i.e. whether flexibility is desirable or not as an element of the integration system). The author makes clear her own position, designating flexibility "a normative principle of governance", noting that many national constitutions are highly flexible, incorporating not only territorially differentiated arrangements but also flexible legal mechanisms which allow for political responses to legal challenges.[20]

The author concentrates primarily on enhanced co-operation as the specific flexibility measure to be included in the Constitutional Treaty. She proposes that the flexibility principle, understood as enhanced co-operation, be included in the first part of the new Treaty for two main reasons: first, it can operate as a facilitator of flexible arrangements in the future, and second, it stresses the, not always recognised, constitutional value of the principle of flexibility. More specifically the author argues that enhanced cooperation should be integrated in the section devoted to instruments and procedures.

IV.

The contribution by Jacques Ziller and Jaroslaw Lotarski, both of the European University Institute, examines the legal bodies of the Union and introduces the idea that the Constitutional Treaty should have one short Title devoted solely to the legal institutions of the EU, these institutions having their own modalities and procedures of functioning, separate from the 'political' institutions of the Union. The chapter's self-proclaimed aim is to be included in the first part of the future Constitutional Treaty. The authors analyse the existing Treaty dispositions pertaining to EU legal institutions and reformulate them in order to make them more under-

[18] The authors of this review believe that a federalist interpretation of the division of competencies implies not only giving the majority of competencies to the constituent units, but also defining instruments to preserve the system's unity.

[19] Jo Shaw is Professor of European Law at the University of Manchester

[20] *Id.*, at 191.

standable for non-specialists and, more importantly, to ensure the conformity of the future Constitutional Treaty with the actual legal practice of the Union and ECJ jurisprudence.

In line with their aim, Ziller and Lotarski present a Constitutional Treaty Title pertaining to the Union's legal institutions to be comprised as follows. The point of departure for the 'legal' Title is a clear definition of the European Court of Justice and its relationship with other judiciary bodies of the EU. The mission of the ECJ should be a broad statement, such as the following: "The ECJ assures the respect for the law of the Union"[21], rather than the current Treaty provisions that refer to the interpretation and application of EU law. The reference to an existing treaty in the article should also be avoided, according to the authors, and international law be rendered binding upon the Union in the 'Union law' that the legal institutions apply.

Further recommendations include a provision assuring the independence of the judges in respect of all other EU institutions, while questions pertaining to procedures and to the *recevabilité des différentes voies de droit* be contained rather in the ECJ Statute so that they retain a certain flexibility, this document being more easily modifiable than the Constitutional Treaty.

As to the proposed Art 2, Ziller and Lotarski present an innovative proposal concerning the composition of the ECJ: contrary to existing Treaty provisions and to the model found in the Convention's draft, the authors propose to part with the tradition of one judge per Member State. In order to preserve flexibility, they propose instead to specify the number of judges/ advocates general in the ECJ Statute, with the Constitutional Treaty assuring the independence of and irrevocability of the judges' tenure, forbidding them to be part of any other EU institution during their tenure as well as during the three years preceding it. Furthermore, they suggest the nomination of the ECJ and of the Court of First Instance judges by the European Parliament, from a Council nomination or directly from a Member States' shortlist.[22]

Art 4 of the proposed title advocates retaining the present Art 245 EC as a definition of procedural rules, with the additional inclusion of the European Parliament in the

[21] TEN REFLECTIONS, at 70.

[22] The judges are currently nominated by Member States' governments (*see*, Art. 223 CE and 225 CE), which can create a situation of dependence. Many national nomination procedures also lack transparency; however, Art.I-28, par.2 of the Convention's draft repeats the current provisions, stating that the judges "shall be appointed by common accord of the governments of the Member States".

process of statute revision as well as in the procedures of approval of procedural rules of the ECJ.

The authors succeed in presenting difficult legal issues in a clear and concise way, understandable to non-specialists. The idea of regrouping all articles pertaining to the legal institutions of the EU in one Constitutional Title and of adding specific provisions to the Statute of the ECJ merits applause. The authors rightly point out that placing the provisions pertaining to legal institutions in different parts of the Constitutional Treaty would result in substantial complication and possible illegibility of the document, and that legal problems could arise from the hierarchical relationship between different parts of the Treaty.

V.

In her chapter on constitutional reform, Helen Wallace, Professor of Political Science and Director of the Robert Schuman Centre for Advanced Studies at the EUI, recognises that the new treaty makes it an ideal time for reform and suggests possible institutional arrangements for an Enlarged Union. However, it is important to note that the author, by her own statement, does not subscribe to the widely propagated view that the present system doesn't work. Moreover, she warns of the dangers of believing that careful designs on paper will solve the problems of a system which is still "an experiment in transnational politics".[23]

The main contribution of this chapter to the institutional reform debate is developed in sections four and five. Section four explores the possible institutional reforms. Helen Wallace identifies the main goal of institutional designers as producing a stable basis for a "European government".[24] This implies "a clear definition of the executive and legislative branches of the system".[25] She puts forward three possible institutional equilibria: a Commission-led executive, a Council- led executive and a bicephalous executive.

Finally, section five introduces a new way of looking at institutional reform. If the main aim was to improve European governance rather than to produce a European government, then the requirements for institutional reform would change. The section thus rounds up the institutional reform debate by reminding the reader that it is performance that should be the criterion for reform, since it is an important source of institutional legitimacy.

[23] TEN REFLECTIONS, at 86.

[24] *Id.*, at 97.

[25] *Id.*

VI.

Koen Lenaerts and Marlies Desomer, of the University of Leuven, consider the necessary simplification of the Union's instruments. According to the authors, "*democratic legitimacy* and *transparency* require the introduction of clear hierarchy of norms, based on both the *content of the act* and the *type of procedure for adopting the act*".[26] They consider a clear-cut distinction between legislative and executive acts is needed, whereby a legislative act is "any act *directly based on a Treaty provision*, adopted in compliance with the *co-decision procedure* [Art. 251 TEC] and expressing a *basic policy choice*. All acts adopted to a different procedure are kinds of executive acts".[27] The authors also categorise the Union's instruments in terms of their effects in the internal legal order of the Members States. Consequently, legislative acts can be subdivided into EU laws and EU framework laws, while executive acts, in order to be recognisable at a single glance, should all be grouped under the general category of EU regulations. In order to strengthen the differentiation between legislative and executive acts, Lenaerts and Desomer suggest that a standard implementation procedure that clearly distinguishes between the legislator (the Council and the Parliament) and the executive (the Commission), should be spelled out in the Treaty.

Finally, the authors too stress the importance of flexibility, subsidiarity and proportionality in the process of rationalisation of the Union's instruments.
With respect to flexibility the authors postulate that, in order to preserve the dynamism of European integration, "the establishment of overly stringent ties between the powers and the instruments of the Union should be avoided".[28] This way the Union's institutions can choose the most appropriate instruments for every single policy area, with the choice of instrument being guided by the principles of subsidiarity and proportionality.

In order to achieve the efficiency implied by the principle of subsidiarity "in certain fields belonging to the Union's core activities, the Union could have recourse to more coercive instruments than present at its disposal with a view to realising, in line with citizens' expectations, the tasks assigned to it […] Conversely, in other fields the efficiency of action by the Union could be served by a less systematic recourse to binding instruments and the reservation of a more prominent place for 'soft law' instruments".[29] Yet, the authors remind us that the principle of propor-

[26] *Id.*, at 108.

[27] *Id.*, at 111.

[28] *Id.*, at 124.

[29] *Id.*, at 126.

tionality implies that the Union should always give preference to the least coercive and peremptory instrument, sufficient to attain the pursued objectives.

The last chapter of the book deals with the vital issue of the entry into force and later revision of the Constitutional Treaty. As Bruno de Witte rightly states, these questions are, 'by far, the most politically controversial aspects of the final provisions and also raise some intricate technical legal problems.'[30]

Both international treaties and national constitutions typically end with a final provision section dealing with, among other matters, entry into force and means of revision. However, the hybrid nature of the Constitutional Treaty implies that a different strategy should be adopted. de Witte argues that, as the revision clause is closely tied to the question of membership, to recognise its importance it should be included in Part I of the Constitutional Treaty, leaving the adoption, ratification and entry into force of the Constitutional Treaty in the final section.[31] Distilling the difficulties of the entry into force process, the author concludes, on the basis of Art. 48 EU that, as the future Treaty would be an amendment of the existing Treaties it will "only into force if approved by all the member states governments in the framework of an IGC, and if ratified by all states according to their constitutional requirements".[32]

The process of enlargement can be expected though to make ratification more difficult, requiring as it does the agreement of 25 national governments and 25 individual ratifications in accordance with national constitutional requirements. The possibility of an overwhelming *accident de parcours* has sparked a number of more flexible proposals, in which the agreement of all member states is not required for the Constitutional Treaty to enter into force.

This is explicit in the view of the President of the Convention, Mr. Giscard d'Estaing. De Witte quotes him as stating that "we have to abrogate the treaties that exist, if a country says that it does not like the new treaty, there is no existing structure for them to cling to, they cannot seek refuge in the old agreement".[33] This would shift the debate from that of treaty revision to that of a *refoundation* of the

[30] *Id.*, at 207.

[31] Other matters that should be included in this section are: repeal of existing treaties, territorial scope, legal status of annexed Protocols, duration, statement of official language versions.

[32] TEN REFLECTIONS, at 211.

[33] *Id.*, at 213.

project of European integration.[34] The author's view that this is not possible is grounded in an analysis of international law and the 1969 Vienna Convention on the Law of Treaties more specifically. The Vienna Convention does not admit the old treaty to be abrogated where no new agreement exists if where the rights of non-participating states under the original agreement are affected by the modification.[35]

Since the adoption of a new Constitutional Treaty would without doubt modify the existing rights of all member states, de Witte concludes that the constitutional breach option being sought by some is not legally tenable. Instead he proposes an entry-into-force clause which reads as follows: "This treaty shall enter into force after been ratified by all the Member States in accordance with their respective constitutional requirements. As soon as five-sixths of the member states have ratified this Treaty, these states may decided by common accord to open negotiations with the remaining member states in order to agree upon any other terms on which this Treaty will enter into force. All states shall seek, in spirit of sincere cooperation, to bring such negotiation to a mutually acceptable conclusion."[36] This procedural arrangement would allow for flexibility while retaining legally orthodoxy.

However, even if, according to the author, a Constitutional Treaty cannot change the legal rules pertaining to its own entry into force, it can do so when its future revisions are concerned. de Witte approaches the question of revision clauses from the perspective that constitutional change is very frequent in the European Union, both in terms of the accession of new members and of revision.

He reminds readers that this new Constitutional treaty is therefore not the final stage of European integration but just an important step in the process. This understanding sees the author carefully consider different amendment procedures, with his suggestions depending upon the part of the Constitutional Treaty to be revised. For example, for those amendments dealing with institutional structure and fundamental values, a convention method should be adopted; whereas for amending those parts of the treaty dealing with policies, the author proposes two different, but possibly cumulative processes: a) the adoption of a model of 'autonomous revision' decided by the EU institutions without the need for ratification of the amendments by the individual national parliaments, b) abandoning the require-

[34] The author points to the fact that the Penelope Draft also affirms the need to adopt the "constitutional rupture" approach.

[35] *Id*., at 216.

[36] *Id*.

ment that all states should approve the changes and the replacement of this rule by some sort of 'superqualified majority'.

The author concludes the chapter by drawing attention to other possible ways of reform of the revision procedure, such as creating a right of constitutional initiative for EU citizens or introducing Europe-wide referenda on constitutional changes. His position on these types of reform is, however, sceptical and it would have been instructive to have such citizen- based methods of reform more carefully considered. However, he succeeds in clarifying the existing debates and providing a legal underpinning to political arguments and his suggested revision procedures succeed in capturing both the necessary rigidity for the stability and preservation of the Treaty and the flexible approach required in a polity formation such as the EU.

C. A general overview

EUI/RSCAS publications have always been destined not only for the academic reader, but also, and sometimes mainly, for the politician at the heart of the integration process. They aim to provide academic expertise and knowledge to those taking important decisions at the European level.

This publication's aim was similar: to influence the constitutional debate in the Convention. Unfortunately, for a contribution covering issues of such importance, it was published and presented to the Convention in April 2003, in other words two months before the official publication of the Convention's Constitutional draft. A more suitable publication date could have been during the first, so-called "listening phase" of the Convention, when its members were actively seeking different opinions.[37] Alternatively, had the book been published along or after the presentation of the official Convention draft, it would have directly fed into the intensive debate of the Convention's proposal. This would, in spite of all the otherwise complicated issues concerning the publication of a book with contributions by a large number of authors, have allowed for the book to play an even more important role in influencing the debate before the autumn 2003 Intergovernmental Conference intended to ratify the Constitution. Although the proposals contained in the book can still be considered by the ICG itself, the nature of Intergovernmental Conferences makes such a scenario rather unlikely.

[37] *See*, for an assessment of the listening phase at the Convention, the essay by Jesse Scott, *The Culture of Constitution Making? "Listening" at the Convention on the Future of Europe?*, 3 GERMAN LAW JOURNAL No. 9 (1 September 2002), available at: http://www.germanlawjournal.com/article.php?id=193). *See, also*, Johannes Jarlebring, Taking Stock of the European Convention: What added Value does the Convention Bring to the Process of Treaty Revision, 4 GERMAN LAW JOURNAL No. 8, pp. 785-799 (1 August 2003), available at: http://www.germanlawjournal.com/article.php?id=305.

In light of the hybrid nature of the debate over a European Convention, which is to EU specialists yet another, for many even futile, attempt to reconsider treaty revision processes, while for non-specialists it is a 'constitutional' and thereby more dignified and noble debate, the book falls short in addressing the complex issues in a language easily accessible by non-specialists. Although the preface specifically names members of the convention and other participants in the European constitutional debate as direct addressees, the reach of a work such as this is much wider. One useful amendment would have been to group the contributions under two or three general categories, providing the book with an allure of unity while respecting both the idea of not developing a full-fledged constitutional proposal as well as the essence of the title. An introductory chapter would also have been useful and might have resulted in a dialogue between the chapters and greater consistency within the book.

This publication illustrates well the difficult trade-off between influence and innovation that authors writing in this field often face. All contributors to the volume under review apparently faced a tough choice of how to approach their topic, apparently reasoning that in order for their propositions to be considered seriously they must recognise the limits of the debate. Resulting, however, is an imbalanced mixture of more straight-forward recommendations presented by their authors with the modest hope of actually influencing the Convention's Treaty draft on the one hand, and fewer theoretical, and necessarily abstract, proposals potentially breathing new life into the debate through the articulation of bold ideas on the other.[38] The pressure on the authors writing on such a moving target with high exposure in both the political and public realm eventually restrained their otherwise well known willingness to come forward with truly innovative proposals. At the time of this review of their contributions, the debate over the Convention's constitutional draft is in the minds (and hearts) of many Europeans – specialists and non-specialists. While soon enough the flow of publications on the topic will become yet again indigestable, it is to be hoped, that the contributions in the reviewed volume will reach their respective audiences.

[38] A good example of such a bold intervention would be the now famous Joschka Fischer's speech at the Humboldt University in Berlin on 12th May 2000. *See*, hereto, the contributions in Joerges/Meny/Weiler, eds., *supra* note 3. *See, also*, Special Issue on the European Constitution, 2 GERMAN LAW JOURNAL No. 14 (1 September 2001), with contributions by former ECJ Justice Manfred Zuleeg, Federal Constitutional Court Judge, Udo Di Fabio, Armin von Bogdandy, Felix Arndt, Colette Mazzucelli, Uwe Säuberlich and Timo Tohidipur, available at: http://www.germanlawjournal.com (past issues, vol. 2, issue 14).