The European Constitutional Treaty: An Analysis

By Udo Di Fabio[*]

A. Introduction

The European Union takes on a new look. The Constitutional Treaty, which was agreed by the heads of State or Government on 18 June 2004, will, admittedly, not reinvent Europe, but it will establish a new foundation for Europe. It is true that originally the Constitutional Treaty was only supposed to improve Europe's legal bases and to make the European idea and the institutions of the European Union more accessible to the citizens.[1] However, through the concept of a *Constitution* alone, the Constitutional Treaty has created a vigorous political impulse, and has marked a new level of Europe's identity. The use of the term "Constitution," however, also gives rise to ideas, hopes and fears that in some cases need to be corrected.

B. Continuity of Community law in Part III.

What is new? And what is merely a further development of the status quo? The amended version of Part III, which will supersede above all the Treaty Establishing the European Community, has a familiar appearance as concerns the development of primary law. Part III, with its 342 Articles, is the most extensive part of the Constitutional Treaty. Factually, it provides a further impulse to integration: The co-decision procedures are extended once again, the cases in which unanimous Council decisions are required are reduced, and the parts of intergovernmental cooperation of the Third Pillar that remained in existence after the Treaty of Amsterdam, but also the Second Pillar's foreign-policy action, are, as a general rule, made a concern of the European Community. The pillar structure, which has characterised the architecture of the European Union since the Maastricht Treaty, is abandoned. In the future, the European Union will be an entity with a uniform institutional or-

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[1] Paragraph 2 of the Preamble.

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ganisation and with a legal personality (Art. I-6). The evolution of European secondary law from directives and regulations into European laws and European framework laws has already been contained in the logic of the development of the integration process. The provision in Art. I-10.1, pursuant to which the European Union law shall have primacy over the law of the Member States, does not contain anything new as regards substance, but serves to clarify the situation.[2]

C. The fundamental rights catalogue in Part II.

What is new is the insertion of a catalogue of fundamental rights in the second part of the Treaty, which, with its 54 Articles, has become quite extensive. It is true that fundamental rights are already effective pursuant to applicable law, in particular through reference to the ECHR. The fundamental rights catalogue from the Charter has, however, been considerably expanded and goes markedly beyond a liberal standard of freedoms. Moreover, it conceptually intervenes in the Member States' central sphere of responsibility for social equalisation (*sozialen Ausgleich*). Art. II-34.3, for instance, provides that the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources. Art. II-29 grants a novel fundamental right to access to a free job placement service. Some aspects of the fundamental rights, such as the recognition of the rights of the elderly, indicate that what is intended is not first and foremost to restrict European public authority in the interest of protecting freedom but to continue welfare-state promises on the supranational level of action. In the meantime, more and more seemingly paradoxical experiences have been made in the Member States: The more widely fundamental rights are expanded as regards their scope of protection and the group of persons that they address, the more easily they can change from liberty rights into factors that restrict freedoms and that justify encroachments. In all free states based on the rule of law, in all Member States of the European Union, it goes entirely without saying that state authority does not systematically exclude people, or put them at a disadvantage, due to characteristics such as race, colour or religion. If, however, the ban on discrimination contained in Art. II-21.1 is extended to so-called indirect or factual discrimination,

[2] The primacy of Community law over national law (including national constitutional law) has been a part of primary law since the *acquis communautaire; see* Case 285/98, Tanja Kreil v. Federal Republic of Germany, 2000 E.C.R. I-69 (2000) . Nevertheless, the primacy of Community law will be functionally limited even after the entry into force of the present draft Constitutional Treaty (primacy of application). Pursuant to the primacy of application, contrary national law is not per se void, i.e. completely ineffective, it is only inapplicable as far as the scope of mandatory application of European Community law reaches, which is based on the principle that the powers of the Community are limited to those specifically conferred upon it. In other respects, contrary national law remains effective.

which in a free society will exist as long as it will remain free,[3] and to unintentional "acts of discrimination," considerable problems will ensue. These problems will become threatening where it is not European public authority to which the ban is addressed but the free European citizens in their states, where their private autonomy is restricted, and where their freedom of contract and their living conditions are bureaucratised in the fashion of a republic of the virtuous.[4]

D. The New Architecture of the Institutions in Part I

Most political discussions have been sparked-off, not by the fundamental rights in Part II or by the allocation of competences, which is of relevance in practice, in Part III, but by the changes wrought by Part I. The few amendments to the European Convention's draft that were made by the Brussels Intergovernmental Conference related, above all, to Part I of the Constitutional Treaty, the so-called institutional part. This part deals with the architecture of the political forces in Europe, with the institutions, their establishment and the allocation of competences among themselves; it deals with the political organisation of the renewed Union.

The notes of discord in the Member States' attitude towards the war in Iraq have shown that the European Union's foreign policy must be coordinated in a better way, and that more emphasis must be placed on the European Union's representation in its external action. A Union Minister of Foreign Affairs, who will be appointed by the European Council, i.e. by the Heads of State or Government of the Member States with the agreement of the President of the European Commission, is supposed to contribute to this. The European Union will soon establish its own diplomatic service. The Union Minister of Foreign Affairs shall be the voice of all the Member States' foreign ministers; he or she shall coordinate a position with them, execute their will and shall, in the scope of his mandate, speak on behalf of Europe in its external relations. Pursuant to Art. I-27 of the draft Treaty, he will have a strong position because he shall be a member of two Institutions: he shall at the same time be Vice-President of the Commission, which means that he will wear the so-called "double hat." On the other hand, the strength of the Union Minister of Foreign Affairs should not be overestimated: It is true that the Union Minister of Foreign Affairs will be in charge of the European Union's Foreign and Security

[3] According to this approach, the closure of a municipal kindergarten that is no longer needed can be regarded as a form of discrimination against women because the dismissal of the (female) kindergarten teachers will only affect women. The cutback on social benefits can be understood as a form of discrimination against foreigners if a disproportionate number of those entitled to such benefits are foreigners.

[4] In this context, *see* Franz-Jürgen Säcker, *Vernunft statt Freiheit!*, ZEITSCHRIFT FÜR RECHTSPOLITIK – ZRP 286 (2002).

Policy, but he or she will not determine it single-handedly. Instead he or she will have to work towards reaching a consensus in the Council, and will then have to practically implement the Council's position. In doing so, the task will be to bridge, and to reconcile, the Commission's own logic and rationale and the intention, on the part of the Foreign Affairs Ministers and the Member States, to actively shape foreign policy. What is needed here is a diplomat who is particularly able in the internal as well as in the external sphere.

The new institutional architecture, however, further strengthens the role of the President of the European Commission as well: it underscores his or her authority to determine policy guidelines, it strengthens his or her right to dismiss Commissioners, and it emphasises his or her accountability *vis-à-vis* the Parliament. The President of the European Commission will more strongly resemble a Head of Government, but the Commission is not a government in the traditional sense. It is an authority that works politically as well as conceptually. Originally, the Commission was a guarantor of a Europe that deregulates the Member States and is itself deregulated as regards the methods that it employs; the Commission provides specialists' expertise for the exercise of Europe's interests in the global economic arena, and not least, it is the guardian of undistorted competition. However, there is cause for wondering if the Commission observes individual Member States' industrial policies that one-sidedly pursue national interests less critically than a school policy decision in the German *Land* (state) of Baden-Württemberg that has no cross-border effect whatsoever and is situated in the central sphere of the Member States' own responsibility in cultural matters.

The tendency to make the evolution of Parliament and Commission follow the model of a federative state has met with opposition from some Member States. The European Council shall therefore have a president of its own, who can remain in office – after re-election – for a maximum period of five years, and who shall be in charge of the European Union's external representation in particular. Pursuant to the draft Treaty, the European President would have hardly any internal competences, but could gain considerable influence indirectly, via the circle of Heads of State or Government. Such a further development of the institutional system will, as a consequence, more strongly personalise European policy. However, there would be competition between the President of the Commission, the President of the Council and the Minister of Foreign Affairs about who will, in the course of time, establish himself or herself, and which office, as the factual powerhouse. Such competition between the institutions is unusual, but it is appropriate to the special balance of power between the institutions in Brussels, which become stronger, and the Member States, which remain self-confident. It is easy to utter criticism in this context, but there is no cause for doing so. The European Union is a supranational association which organises political rule in a new and innovative fashion and

which would be ill-advised to follow old state models from the 19th century in a manner that would not be very sophisticated from the intellectual point of view.

The new model is promising. It corresponds to the balance of power between the Union and the Member States, and it is open to surprising experiences, including the experience of who will be the brightest star in the triumvirate of representatives. The personalisation of the Union that goes with it also serves democratisation. The formation of alliances and the use of tactics that we experience presently in the European Parliament as regards the question of who will be the President of the European Commission is a signal of an increasing order in the formation of political camps, which makes, at least very roughly, alternatives visible to the voters.

The weighting of votes according to the strength of a Member State's population in qualified majority decisions, which has been particularly controversial and which has been set at 65 % pursuant to Art. I-24, is seen very critically by some, but its practical effects for the future cannot be assessed yet. Some criticism, which is substantiated by economic arguments, argues that the lowering of the proportionality factor of the weighting will increase the danger that those Member States, which are most strongly regulated, will force their higher level of regulation upon the more liberal ones in order to deprive them of competitive advantages. This, it is argued, would in turn lead to an even further increase the level of regulation.[5]

E. The Non-material Power of the Concept of a Constitution

Everything that is regulated in the four parts of the Constitutional Treaty could also have been achieved by a mere further development of the existing European treaties. In their majority, the regulations are geared towards the completion, consolidation, adaptation or improvement of the status quo. The Brussels Intergovernmental Conference, and even the European Convention, would probably have attracted only average attention if there had not also been the concept of a Constitution.

In Germany, it was by no means undisputed whether a supranational organisation such as the EU could have a Constitution. Today, however, the opinion prevails that the concept of a Constitution is not limited to states alone but can, with a modified meaning, also be transferred to supranational organisations, for some time, the c*onstitutionalisation*[6] *of world law*[7] has been discussed. Behind this, there is the obser-

[5] Roland Vaubel, *Sieben Einwände*, DIE WELT, 9 July 2004.

[6] Ernst-Ulrich Petersmann, *Human Rights and International Economic Law in the 21st Century*, JOURNAL OF INTERNATIONAL ECONOMIC LAW 3 (2001).

vation that the states' legal relations with each other generate an ever increasing level of self-commitment, which develops autonomously, be it through the law of international agreements which establishes international organisations, or whether it be through the declaration of the universal validity of human rights.

The draft of a Constitutional Treaty, of an EU Constitution, exactly fits into this tendency and is therefore not geared towards a self-empowerment of the EU that would supersede the Member States' responsibility for actively designing their policies. The European Union does not claim primary sovereignty under public international law. The Member States, which retain their sovereignty, will remain the masters of the Treaties, including the Constitutional Treaty, even after the coming into force of the Constitutional Treaty. The right of voluntary withdrawal pursuant to Art. I-59 is therefore not the generous gift of a tolerant Community but a right that obviously exists, at any rate, under public international law. This could only change if the procedure of amending the Treaty, which has been binding up to now, were abandoned in a clearly defined manner and if in the future, the Constitutional Treaty could be amended without the process of ratification under public international law through the decision of European Union institutions.

Therefore, the *flexibility clause* of Art. I-17, provided that it is interpreted accordingly, might prove to initiate, in a manner that would be alien to the system, a withdrawal from the foundation of Europe on the basis of the law of international agreements. The requirement of unanimity and the participation of the national parliaments are not a complete substitute for the process of ratification under international law: The Union only has the competences that have been conferred upon it specifically. The conferral of the competence of determining its competences itself touches upon the very foundation of the Union, even if restricting provisos are added. Under the concepts of public law and public international law, entities that can determine the assignment of their competences on their own are sovereign entities. Art. 17 of the First Part of the Constitution could therefore be understood as a covert empowerment to define the *exceptional situation of self-empowerment*. However, such an interpretation would hardly be compatible with Art. I-9.2, pur-

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[7] On the idea of an interlinked and ever more autonomous international law and on the concept of the world society as a description of a process of internationalisation, *see* Niklas Luhmann, *Die Weltgesellschaft*, 57 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE 1 (1972); Niklas Luhmann, *Die Weltgesellschaft*, 2 SOZIOLOGISCHE AUFKLÄRUNG 51 (1975); JOHN W. BURTON, WORLD SOCIETY (1972); NIKLAS LUHMANN, SOZIALE SYSTEME 585 (1984);, PETER HEINZ, DIE WELTGESELLSCHAFT IM SPIEGEL VON EREIGNISSEN (1982); IMMANUEL WALLERSTEIN, GEOPOLITICS AND GEOCULTURE. ESSAYS ON THE CHANGING WORLD-SYSTEM (1991); Ulf Hannerz, *Cosmopolitans and Locals in World Culture*, 7 THEORY, CULTURE & SOCIETY 237 (1990); UDO DI FABIO, DER VERFASSUNGSSTAAT IN DER WELTGESELLSCHAFT (2001); Udo Di Fabio, *Verfassungsstaat und Weltgesellschaft*, *in* SYMPOSION ZUM 60. GEBURTSTAG VON PAUL KIRCHHOF 57 (Mellinghoff et al. eds., 2003).

suant to which the principle that the powers of the Union are limited to those specifically conferred upon it continues in existence unchanged. A very sensitive boundary of the European Court of Justice's future autonomous interpretation, but also of the assessment under constitutional law of a national law ratifying the Constitutional Treaty might therefore materialise here.

The Constitution of Europe, which has been brought under way now, has not deserved to go down in history as an secret and disguised attempt of establishing a federative state behind the backs of the states and the peoples that support integration. It does not deserve a reinterpretation later onof a deliberately ambiguous legal text in order to discover the existence of faits accomplis that are not seen as such all that clearly today. The start of such a project requires a serious debate that is precisely focused on this subject, and it ultimately requires a clearly worded question to the individual peoples of the Member States that takes their respective constitutional orders into account.

The question of Europe's ultimate goal, and the question of a "state or non-state," however, always set the thoughts back on the old tracks and hide what is really new. Today, the Union is about to come much closer to the citizens of Europe, and to approach them much more directly. It is obvious that today, a European loyalty coexists with the national ones: We Europeans regard ourselves as citizens who are integrated in different political communities. There are strong indications that the national level is still the primary community in most people's minds, but this need not remain so. Fundamentally, a competition between the levels of government for the citizens' agreement and for their loyalty has been going on for a long time behind the tough struggle for the legal basis of Europe and for the shaping of European policies in practice. This competition sometimes takes place along the lines of cross-level party-political controversies, but even more frequently, it does not follow these lines – we know this process very well from federative states.

F. The Perspectives of Europe Under the Constitution

This insight focuses the attention on the long-term perspectives of the European constitutional project. What will determine the future of Europe under the Constitution? At first, the perspective narrows towards ratification, but beyond this, there is something far more important: Europe's political identity. In a closer perspective, we will all look at the process of ratification of the Constitutional Treaty, the dominant feature of which is the *pragmatic approach of success*. It should be exciting to observe how the peoples of Europe will articulate themselves in their different respective political forms, and whether a consensus will be achieved. In this context, it is striking even now how a European c*oherence of diversity* is gaining strength: As regards European issues, the public opinions of the Member States, which still have

very much of a national focus, come into ever stronger contact with each other and react upon one another. What is coming into being is the effective preliminary step of a European political public opinion; what takes place is networking, but not a merger. Public opinion in Germany, for instance, closely observes that in the United Kingdom or in France, the people will be asked about the Constitutional Treaty in referendums and it demands, as if it were the most natural thing in the world, that the same procedure be followed in Germany. No one seriously cares about the fact that in Germany, this would require an amendment of the Constitution. Here, Europe's field of force is clearly perceptible.

In the long run, however, something quite different will become visible and dominant. Recently, Ralf Dahrendorf made the apt observation that fundamentally, the Constitutional Treaty generates an inappropriate symbolism which, apart from some positive effects, has the disadvantage of diverting attention from Europe's true problems.[8] The decisive threat to the continuation of the tremendous European project lies in an asymmetrical debate. We talk in general terms about the progress of integration, but what we mean by this is always just a strengthening of the Union's competences and a cutting back of the Member States' individualism. In accordance with this debate, we will all be assigned our place, as iron fillings are arranged by the ordering force of the magnet, supporters of Europe versus critics of Europe. I do not want to argue that this debate is not important, and I do not want to judge who is right in this debate. But today, it is an abstract discourse, in most cases devoid of content, without standards: a debate that is embarrassingly apolitical. This has not always been that the case. In the first decades after the war, Europe as a political idea was the goal in itself. The issue was to overcome national egotisms and dangerous antagonisms, to neutralise and domesticate them in cooperative institutions. This is, and has been, an issue of enormous political importance, which is decisive when it comes to ensuring a durable peace and the prospect of welfare. In contrast to this, the functional method of achieving unification seemed to be just a vehicle, an instrument of political unification. The fundamental freedoms and the Internal Market, the elimination of barriers to trade, the deregulation of sectors of state-controlled economy and the control of subsidies were supposed to create an economic area, and economic interests geared to the economic area on the part of the major enterprises and of the members of the societal elite in leading positions, that could no longer be ignored by politics. The economically unified basis of Europe was supposed to revolutionise the political, and also the cultural, superstructure. This is exactly what has happened.

[8] Ralf Dahrendorf, *Ein merkwürdiges Dokument*, DIE WELT, of 12 July 2004.

Apart from some exceptions, however, the functional unification with its liberal core has hardly been taken seriously as an independent idea. Today there is the threat that a market economy which is open to competition, and the decrease of public interference in the economy will be thrown off like a ladder which has been needed to climb a political plateau that is difficult to access but which now seems useless to many. In recent years, the three major actors of European policy, Parliament, Council and Commission, have been showing a marked tendency of occupying the issues that characterised the old provident state and the social welfare state. Consumer protection, a protection of the environment that pursues ambitious precautionary aims such as a comprehensive control of chemicals, interventions in the advertising markets, bans on advertisements for tobacco products and semi-luxury and luxury foodstuffs in order to enhance the general level of health, are only examples of a legislative motor that is running at full speed. It is true that in its report "Better Lawmaking 2003," the Commission rightly points out that the number of legislative proposals submitted by the Commission decreased from 787 in 1990 to 371 in 2003,[9] but the existing level is high; as concerns the number of Acts, legislative activity is higher than that of over-regulated Member States such as Germany.[10] What ismore important than the mere number of Acts is the change in quality. The completion of the Internal Market, but also the agricultural sector required extensive legislative activities; today, the focus is ever more strongly on legislative activities that recommend themselves to the citizens as preventive and provident measures, that intend to influence levels of socio-political care, that want to make the lives of the citizens of the Union healthier, safer, freer from discrimination, and quite generally, better and nicer.

All European Member States know this eudemonist pattern of policy, this is the way in which the struggle for power took place in Cicero's time. Politicians recommend themselves as the citizens' good friends who are concerned about their well-being every day. If a debate that moves people's minds in some way comes up somewhere, politicians will immediately present proposals for a new Act or for an administrative measure. If a cable railway falls down in an accident, there will be a corresponding safety regulation soon, and *Länder* (states) that will never operate a cable railway on their territory because their landscapes are not even remotely apt for anything like this will have to pass an Implementation Act because otherwise they are threatened with infringement proceedings. The result on the state level can

[9] Report from the Commission "Better Lawmaking 2003" pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality (11th Report) COM (2003)770 at 31.

[10] The number of bills in the 14th German *Bundestag* was 1013 in the entire four-year term, 549 of which were promulgated as Acts (Wissenschaftlicher Dienst Bundestag, Parlamentsmaterialien, as per 25 June 2004).

be observed especially in the highly regulated Member States. A dense bureaucratic network of regulations paralyses the initiative of a free society, or leads to the emergence of areas that are remote from law. In spite of high public revenue, there will, as a general rule, not be sufficient financial means for the inexhaustible political plans. Stability criteria are not met; this is not due to pure high spirits but to a petrified socio-political transfer system; the cost of economy and of the labour market meanwhile has a marked effect, in the shape of global competitive disadvantages, on the whole of Europe.

The European Union must not give in to the temptation of playing the guardian angel and the well-meaning preceptor. So far, European politics have even been a highly constructive counterweight in this *process of self-obstruction*. The Commission, as the guardian of the European Internal Market, but also of compliance with the stability criteria, has contributed more rationality and a greater limitation of excesses to the Member States' policies than our finely balanced internal systems of separation of power have been able to do. At present, however, there is the danger of Europe being put on the same tracks in the competition for the citizens' agreement, and that it therefore collects competences and makes the old unitary promise of being able to regulate everything better on a higher level: security requirements for motorway tunnels, the protection of pedestrians in road traffic, protection from dishonest business practices. The candidate for the office of the President of the European Commission promises Parliament a policy for more jobs and thus creates expectations that he will be hardly able to fulfill. The Commission understands subsidiarity also as a concept to expand the Community's activities. Admittedly, it is thought possible to restrict one's own activities in this context. However, it is virtually precluded to return competences to the Member States once they have been acquired.[11]

What the European Union needs is a serious debate on its political direction. Integration jeopardises itself if it interferes with the Member States' spheres of identity and intervenes in national cultural spheres irrespective of whether the respective matter is really a *cross-border issue*. Does the Commission really want to measure, against the standard of Community law, an issue that touches upon the French national identity, such as the question of how to deal, at public schools, with the Islamic rule for girls and women to cover themselves? The main reason why the European Union and its idea of integration are alive is that the states of Europe perverted the principle of national competition to an aggressive arms race a century ago. It is also alive because without a firm economic and political cooperation and

[11] Report from the Commission "Better Lawmaking 2003" pursuant to Article 9 of the Protocol on the application of the principles of subsidiarity and proportionality (11th Report) COM (2003)770 at 36.

rapprochement, the Europeans cannot gain peace, liberty or influence in the world. Today, the EU must find a role in which it can strengthen Europe's influence in the world. In this respect, the Union's position is not as good as it may seem at first sight. Our Europe, which suffers from undesirable demographic trends and which becomes increasingly complex on the cultural level, is an actor in an ever-stiffer international competition, which we cannot win by isolating a large consumer market and by introducing compulsory standards alone. Instead, the European Union must mobilise its citizens', and the Member States', willingness to perform by introducing stimuli and by reintroducing liberties instead of reducing them by regulation performed in the furore of unification.

Politicians must tell citizens the truth: Our joint capital is the people's will to perform and not claims for benefits from the state: only then will freedom remain in the centre of our experience. We do not need more laws but less. The European fundamental rights must therefore be regarded by the judiciary much more as a limitation of European law-making. They are not an instrument that serves to discipline the Member States, to standardise their Codes of Procedure or even to intervene in the free society by means of case-law. Fundamental rights constitute in particular the legislature's self-commitment that is supposed to ensure that the legislature, in its approach of care in day-to-day politics, will not disregard the limits that are set by freedom. The new Constitution does not urge this old impulse vigorously enough, which is very new again today.. In part, the new Constitution originates from a way of thinking that wants to woo the citizen with promises of ever new legal Acts; in part, the Charter of Fundamental Rights of the European Union also is not free from this mentality. The European Union must still promote free competition; it may certainly not prevent that the Member States embark on an industrial policy of their own, but in individual cases, it can control such policy and complement it more strongly with a trans-European one. The Airbus and the European Space Agency are examples of a good way of entering global competition. The harmonisation of foreign policy from case to case, especially with a view to the European Union's neighbours, and a security and defence policy which is compatible with that of NATO are on the agenda.

The Constitutional Treaty is important, but it does not decide the fate of Europe: In the 21st century, we may not be misled by the old myth of the concept of a Constitution. The Constitutional Treaty will not be the last one because the European Union must adapt to new situations and must continue to learn as concerns its institutions. Europe finds its unity and its shape in a tentative, evolutionary manner and by trial and error. What are important are the political contents and the direction that is taken. The European order is no longer strictly hierarchical, authoritarian and divisive. It is a network formed by the different political communities, by the citizens' different, but complementary loyalties. The organisational shape of the

union should, as it has always been in the past, consolidate where practical success is achieved. It would be wrong to create this new Europe at the drawing board of old state theories and to intend to enforce it with the authority of a Constitution.

And it should also not be forgotten that Europe cannot exist without strong Member States that are powerful on the political, economic and social level. The new allocation of power between the institutions and the Member States, which are represented in the Council, corresponds to the political balance between Union and Member States; it promotes a clearly recognisable democratic profile and strengthens the options of joint action. Especially in its Part I, the Constitutional Treaty is balanced and open to new developments. We should regard its ratification with calm and should not create pressure, which would be wrong. The talk that a rejection of the Constitutional Treaty would lead to the respective state's exclusion from the Union is nonsense. One can say something like that in an exaggerated manner, in order to mobilise one's own people in a referendum, although one knows that Art. IV-7.4 of the Constitutional Treaty recommends a pragmatic approach. On the contrary: threatening gestures from the wrong side can cause refractoriness (*Renitenz*) among self-confident citizens where agreement still prevails today. No Union wants to do without, or can do without, France, England or Poland. Europe will not grow with the help of strong words, it will not flourish through regimentation or through the principle "Whoever is not for us is against us." Europe is based on the rational idea of a continent that is united in its continuing diversity. It is open to all European states which embrace the Western canon of values, human dignity, the freedom of the individual, equality before the law and democracy, and which comply with the economic, social and political preconditions. The European Union is a new form of political rule, which does not want to take anything away from the people and their cultural and political communities but, on the contrary, gains approval by creating spaces of personal freedom and by proving its worth as a complement of state orders, as a space of joint action in day-to-day politics.