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A bad Constitution which reveals a cancer in our democracy

Dear colleagues and friends,

After six months of intense reflexion, an argumentation about the "constitutional treaty" is taking shape, stemming from it but extending beyond it, an argumentation that is neither rightist nor leftist, and that points out a historical danger to us all, far above politics. For this reason, this short argumentation should interest citizens of all sides.

Six months ago, in September 2004, I, like everyone, favored this text without having read it, on principle, just "to move forward", even though I knew very well that Europe's institutions were far from perfect. I did not want to be someone to slow down. I really believe that the vast majority of Europeans, regardless of left/right political orientation, love this beautiful idea of a united Europe, more fraternal, stronger. It is a dream of peace, consensus, a very widespread dream bringing the majority together.

I had not read the text and I really did not have the time: too much work... And then again, Europe is far away. And with all those politicians, I felt safe, should any dangerous tendency arise there were bound to be some of them to protect us... and I exempted myself from " doing politics", i.e. I exempted myself from taking care of my own business.

Some voices had arisen already, protesting against the treaty, but they came from the extremes of the political spectrum and for this simple reason, I did not even start reading their arguments, still confident in the mainstream opinion without checking for myself the validity of the ideas at stake.

And then suddenly, some protests emerged from people one could not suspect of being anti-European. I then read their appeals, leaving aside their political labels, and I found their arguments very strong. I started reading, a lot, entire books, from any side, Fabius, Strauss-Kahn, Giscard, Jennar, Fitoussi, Généreux, etc. And many more articles of those in favor of the treaty because I wanted to be sure not to be misled. And the more I read, the more anxious I got. Today, I can think of nothing else, I have lost sleep over it, I am afraid, simply, afraid of losing what is essential: protection against the arbitrary.

Today, I still read all speeches, those in favour as well as those against, I keep searching for the flaw in my reasoning and this text is an incitation to think and an attempt to make progress: if you can find a flaw, let us talk it over, please, with calm and honesty; it is very important. I can be mistaken, I sincerely seek to avoid it, let us reflect together, if you care to.

I feel that it is my duty, as a law teacher [1], to talk about it a little more than the others, to discuss it with my colleagues, but also with my students, with journalists too. I would be an accomplice if I remained silent.

I have thus found more than ten serious reasons to be opposed to this extremely dangerous text, and ten other reasons to reject an unpleasant text, not fraternal at all, actually. But the five strongest reasons, the most convincing ones, those that are shared across the political spectrum because they simply threaten the very reason for having a political thinking, those appeared to me later because it takes a lot of work to uncover them. It is these reasons, the five most significant ones, to which I would like to draw your attention, seeking your opinion so that we can speak about it together, given that the journalists deprive us of public debates.

In this public affair, **the pillars of constitutional law are shaken**, and this calls to mind five traditional principles designed to protect the citizens.

1. A Constitution should be readable to allow a popular vote: this text is **impossible to read**.
2. A Constitution does not enforce one policy or another: this text is **biased**.
3. A Constitution is revisable: this text is **sealed** by a requirement of double unanimity.
4. A Constitution protects from tyranny by separating powers and controlling them: this text **does not organize a true control of powers, nor does it provide for real separation of powers**.
5. A Constitution is not something granted by those in power, it is drawn up by the People itself, precisely to protect itself from the arbitrary use of power, through a Constituent Assembly, independent, elected for that purpose only and afterwards revoked : **this text enforces European institutions that have been established over the last fifty years by the men in power, who have been, therefore, judge and party**.

Preamble: Constitution or Treaty?

How to **designate** exactly this project?

We shall recall what a Constitution is and why its elaboration should be subject to special caution.

A Constitution is a **pact between citizens and governments**. It is because they have accepted to sign this pact that citizens accept to obey laws. It is upon this pact that the authority bases its legitimacy. **This pact must protect people against injustice and the arbitrary**. Certain Principles which will be discussed below should guarantee that this pact plays its protective role and that citizens will be able to control it.

The project establishing a constitution for the European Union ("constitutional treaty") has no time limit [2]. It imposes itself on essential matters of the people's lives [3], its legal force is higher than national standards (bills, laws, constitution) [4], it organizes all main powers (executive, legislative, judicial) and it balances them.

This project for a "Constitutional Treaty" is, *by nature*, a Constitution, since it defines "the law of the law".

Current debates show that this preamble is at the centre of the refutations. So, I shall support my statement with a citation from **Olivier Gohin, professor at Paris II University**: *"**The new treaty is a Constitution** since it satisfies the practical definition of a Constitution: organisation of public powers and guarantees for fundamental freedoms, with the identification of a constitutive power(...) the new European Union comprises, now already, the elements required for the definition of a State."* [5].

Moreover, the **primacy** of European law, even for a simple bill, over the laws of members States, even over their Constitutions, is cogently demonstrated by several University professors who evidently protest against this juridical 'seism' purposely under-estimated by the French Constitutional Council. (cf the texts of *Frédéric Rouvillois and Armel Pécheul*, note 4)

Therefore, the point is not, in my opinion, the designation chosen for the text by its authors ("Treaty" rather than "Constitution"), but the fundamental principles that will be discussed below, which are meant to **protect citizens** against dangerous institutions: Any fundamental text that defines or modifies institutional powers must respect these principles, whatever its official designation.

Does this text, which involves constitutional law, offer the guarantees that we should expect? [6]

First principle of constitutional law: a Constitution is a readable text

A constitution must be accepted, directly, by the People, who will submit itself to its rule.

For this agreement to make sense, the text must be readable by the People, who will agree to it (and not only by experts).

From this viewpoint, the so-called "Constitutional Treaty" is too long and too complex [7]: 485 pages in A4 format, close to one ream of paper (in the compact version presently accessible on: http://europa.eu.int/constitution/download/print_en.pdf)

Not only is this **length** unprecedented for a Constitution, anywhere in the world, but the text contains innumerable **cross-references** that make it simply illegible for the average citizen.

Some important points, such as the definition of the "Services of General Economic Interest" are not in the text [8].

Contradictions even show up between distant parts [9].

To illustrate further the difficulty of reading this text, we must also underline, and it is a serious issue, **the absence of a list of domains in which each Institution is entitled to make the law**. Thus, the list of domains in which the European Parliament is prohibited from legislating is nowhere to be found (and we could therefore be completely unaware of the existence of such a list - this is by no means an innocuous or trivial matter). To understand this distribution, you

need to scrutinize hundreds of articles, one by one, hoping not to miss any (see below). Can we speak of readability?

Other important articles, such as I-33, which creates **"non legislative acts"** (rules and decisions), which allow a (non-elected) Commission to create, without parliamentary control, norms as binding as laws [10], are not followed by any check-list.

This length and complexity makes criticism from the average citizen impossible [11].

The 75% of Spanish voters who approved this text, as well as the 60% who did not go to vote, **probably did not read it**. Neither did the ministers, nor the members of parliament, the professors, the journalists and the citizens who all have other things to do. Who can find the time to read 500 A4 pages? You just have to ask yourself whether you can: it is no different for others.

These citizens thus take the major risk, for them, but also for their children and their grand-children, to discover too late what it is that they voted for and cannot change any more.

Obviously, it is necessary to read and understand what one signs. Otherwise, one refuses to sign.

Even if it were simple (and it is not), a text that long is impossible to assess with any degree of discernment distinctly.

And yet, one has to make up one's mind. But how to decide about a text that one cannot read? By thinking like "the others" do, we feel reassured, like *Panurge's sheep*.

This length is, in itself, non democratic: the debate is restricted to experts.

A Constitution is the fundamental law, it is the "law of law", it must be readable by all, so as to be endorsed or rejected in full awareness of the facts.

Second principle of constitutional law: a Constitution is neutral and permits political debate without deciding of its outcome

A democratic Constitution is neither of left nor right, neither socialist nor liberal. A Constitution does not take sides: it *makes it possible* for a political debate to emerge, it stands *above* politics.

On the contrary, the "Constitutional Treaty", in addition to setting the rules of the political game, would like to fix the outcome of the game too!

By imposing liberal constraints and references in all its parts [12] (I, II and especially III), **this text cannot be considered politically neutral. It imposes, for a long time, economic policies,** which should normally come out of daily political debate, changing according to circumstances. This is like holding a gun to any idea of economic alternatives.

For example, this text establishes for a long time that Europe deprives itself of the three major economic levers which allow all States of the world to govern:

No monetary policy: We, Europeans, are the only ones in the world who have set a totally independent Central Bank with, moreover, as a major, constitutional, unalterable role, to fight inflation, not to promote employment or economic growth [13]. No means is given to political powers to modify these missions. We already know, however, that anti-inflationist policies are paid with unemployment [14], as an almost mechanical effect. (carefully read note 14)

No budget policy: The growth and stability pact [15] confines States to a severe budgetary policy, which, for sure, is one possible policy, but should not be the only possible one *forever*. A Keynesian boost (through public works) is now excluded.

No industrial policy: Any obstacle to competition is prohibited [16], therefore any help to specific national actors, be they fragile or in the public interest [TC added this! sorry, it's getting late...;-)], is prohibited.

A **policy of economic impotence,** as described by the economist Jean-Paul Fitoussi [17], is thus institutionalised, **imposed** for years.

On this subject, one should read the fascinating synthesis of **twelve economists against the "Constitutional Treaty"** [18].

The "Constitutional Treaty" project reduces European citizens to morons. With it, there would be no incentive left to think about alternative policies. What is the point of a political debate, once any actual alternative is formally excluded by the Supreme Text?

To be concrete: if, tomorrow, a European majority wants to change directions and revert to a non-merchant organisation, with more emphasis on solidarity, it will not be possible: Such a simple political change would require full unanimity.

Apart from the Soviet Constitution (which imposed a specific policy too: collectivism), such a biased Constitution would be unique in the world.

Third principle of constitutional law: a democratic Constitution is revisable

All people of the world who live in democratic countries can revise their governmental pact.

The ECT is much too difficult to revise [19]: to change a comma in this text, one first needs the governments to agree unanimously on a revision project, then one needs the unanimity of the people (Parliaments or referenda) to ratify it (this is called the ordinary revision procedure).

With 25 member States, this **double unanimity** constraint is a true guarantee, given to those opposing any change, that the text is unalterable. It is moulded solid from the outset.

Practically, if tomorrow a broad European majority wants to change its fundamental law, it will not be able to. This is both shocking and frightening.

This is unacceptable for a Constitution [20] and it would be, there again, a unique case in the world.

In reply to this point the word "treaty" is put forward, along with the claim that unanimity is therefore normal (which is true as regards treaties) but this doesn't hold: this text self-evidently plays the role of a constitution and by playing with words the "constitutional treaty" oxymoron (attaching contradictory words) makes way for, **the creation of a new supreme standard much too rigid andtoo difficult to modify**.

Strangely enough, this excessive rigidity is accompanied by a very flexible revision procedure which does not require the people's direct approval: **the simplified revision procedure** [21] **allows one particular power (the Council of Ministers) to modify, of its own initiative, one of the key elements of the Constitution affecting the degree of sovereignty member states retain in such or such a domain** (because the passage to a simple majority decision makes all countries lose any right of veto) [22]. This is really serious: **this constitution is of variable geometry**, but does not involve people's direct approval of each variation.

On another matter, for the entry of a new State in the EU, the unanimity rule is a protection, but it is not the unanimity of the people consulted by referendum which is necessary. First it requires the unanimity of the 25 representatives of the governments (a lot of them are not elected and none is elected with a mandate to decide on this specific point), and then the unanimity of the States (according to their national procedure of ratification [23]). Thus, only those countries which use a referendum in their ratification procedure, as France does, will directly consult their people.

It really seems as if what the people want is of little importance to those who govern them.

The 4th Principle of Constitutional Law: A democratic Constitution protects from the exercise of arbitrary power by insuring both the separation and the control of powers

The "Spirit of Laws", defined by *Montesquieu*, is probably the best idea in the whole history of mankind: **all powers naturally and mechanically tend toward abuse. It is therefore essential, in order to protect man from tyranny, first to separate the powers and then to organise their control. There should be no confusion of powers and no power should exist without counter-powers.**

Thus the People say: *"You, Parliament, you make the laws but do not enforce them. And you, Government, you enforce the laws but you cannot make them yourself."* In this way **no single power can, alone, impose its will**. This is essential.

"In addition, if one of the bodies considers that the other one is not behaving in an acceptable manner, it is entitled to revoke it. The Assembly can dissolve the government and the government can dissolve the Assembly. In both cases the People is called upon to arbitrate (through elections) and the People must remain the unique source of power." **Each body must be held accountable and know it is being controlled at all times.** This is also essential.

This may well be the best idea in the world and it frees us from the fear of tyranny.

Even within the modern framework of a union of states one fails to see why such basic protective principles should be dropped.

However the balance between the three types of power (the legislative, the executive and the judiciary) is hard to strike.

Direct universal suffrage gives legitimacy to the legislative power and it is tempting to give it more power again. **But an assembly, no matter how legitimate, can become tyrannical because the election mechanism is no substitute for a counter-power**. Besides, an assembly is not necessarily the best place to make decisions: mob effects and a dilution of individual responsibility when it comes to collective decisions can lead to abuse [24].

This is the reason why provision is often made to limit parliamentary power in spite of the sovereignty it embodies: in a bicameral (two chambers) system, the one tempers the other. In France the Sénat (Senate), whose members are also elected, plays the role of moderator of the Assemblée Nationale (National Assembly) but it cannot block decisions since the Assembly has the last word in case of disagreement.

Another important limit is often imposed on the legislative body: **it must be possible to dissolve the Assembly,** such a counter-power being essential to make public authorities aware of their responsibilities.

Within these two limits - two chambers and the threat of dissolution – **Parliament should play a real legislative role**; it should have the initiative to make laws, the right to amend texts in every field and a real role in fixing taxes (one of its main historical prerogatives being to control the tax burden imposed by public authorities).

This is not at all what is foreseen in the ECT: **Parliament doesn't have the initiative to make laws at all** [25], which in itself is unacceptable, and its role in voting the budget, although increased, remains limited. Above all, **it is excluded from deliberating upon laws in certain areas of competence left** to the Council of Ministers (special legislative procedures [26]).

In fact the problem is more serious: for a long time I concentrated my attention on laws (legislative acts) but now, much to my surprise, I am discovering "**decisions**" (Art I-33, I-35). These *"non-legislative acts"* are not to be confused with simple *regulations*. There is nothing wrong with a *regulation,* which is an application text, like decrees and orders in France, a limited power traditionally conferred upon the Executive with a view to quickly fixing the practical procedures of law enforcement. However "decisions" are of a different order and they are described separately [27].

"Decisions" appear just as binding as laws are, with a wide-sweeping scope. But they seem easier to make than laws; they are submitted to lesser control (probably they are controlled by th European Court of Justice, ECJ but not by Parliament). Having studied the text of the Treaty with

great care to discover who can make these "decisions", akin to *"laws without parliament",* I find four institutions: the European Council (heads of state and governments), the Council of Ministers, the Commission – all members of the executive power, at national or European levels, and often not elected – and the Central Bank. The Central Bank has the power to make such "decisions" on its own, but who controls the Central Bank? **Where are the safeguards against such norms elaborated without any parliamentary discussion?**

We need to make the inventory ourselves (because it has not been provided to us) of those articles in the Treaty which make it possible – for the time being – to create "laws without Parliament". I am talking here of the special legislative procedures and general non-legislative acts. This needs further work…

We are presented with a triangle made of the Parliament, which represents the peoples of Europe, the Council of Ministers, which represents the States, and the Commission, which represents the common interest (sic).

The Commission mainly emanates from the Council [28], which nominates its members. Parliament has some say in this and it "elects" the Commission's President – proposed by the Council. The Commission is totally independent, it does not receive instructions from anyone, but it may be revoked by Parliament following a vote of no confidence. Any single Commissioner may be asked to resign by the President of the Commission.

The Commission is in charge of the technical preparation of the laws and submits its proposals to the Council of Ministers and to the Parliament, which are both presented as legislative bodies.

The Council of Ministers is thus presented as a "high chamber" which could be compared to our French Senate. But this idea is not acceptable; not only are the ministers not elected but they are part of the Executive in their own countries. In other words they control the public means which will allow them, when they get home, to apply the rules they have created themselves.

The same people therefore make the laws at a European level and enforce them at a national level: this is an obvious case of **confusion of powers**.

The Council of Ministers clearly belongs to the Executive but it has also been given a legislative role.

The absence of separation of powers means we are losing an essential safeguard against the arbitrary. Even if we are talking of a limited number of issues/competences (Is it 21? Does anybody know the exact number?), **it is dangerous.**

In the article previously quoted [29], Laurent Lemasson notes that the Parliament is composed of only one chamber and **is not accountable to anyone: nobody can dissolve it**. We have seen that it does not have the initiative to make laws but it can revoke the Commission who has that initiative. This gives Parliament a certain weight when "suggesting" proposals. According to Lemasson, such an organisation poses **the risk of an assembly regime** (i.e. a sort of parliamentary tyranny). This fear is probably exaggerated because a vote of no confidence in the Commission requires a **two-thirds majority** and can only apply to **the way the Commission's affairs are conducted**. In other words, true political censure [30] seems out of the question.

We can see **co-decision in a positive light as a two-way counter-power**: neither Parliament not the Council of Ministers can abuse their power(s). But a system with two chambers (involving for instance an Assembly of national Parliaments or an Assembly of Regions rather than an "Assembly of Ministers") would be more democratic.

Moreover **the co-decision completely disappears when Parliament is excluded outright from certain issues where the Councils, the Commission and the Central Bank make the laws on their own** (not surprisingly these happen to be essential economic issues) (Art III-130-3 on the internal market and Art III-163 and III- 165 on the rules of competition). **This is shocking because here, we have practically no counter-power any more**. Can the Commission (with whom the initiative often resides) really be considered capable of intervening should the Councils be guilty of arbitrary abuse, when Commission and Councils are so closely related?

It seems therefore that there is **a real lack of democracy in all the areas in which Parliament is not involved: there is neither separation nor control**. The list of these areas denied

parliamentary control is written nowhere and the fact that Parliament is excluded from them is not even clearly stated [31].

Wherever power is not controlled, we are lacking another safeguard against its arbitrary use. .

To any citizen not psychologically prepared for it, this is a shocking state of affairs. But maybe I am wrong. Can anyone explain this strange "balance" of powers? For whom was the text written?

As citizens, we would like to be told why such an exclusion exists, what criteria were used to justify the excluded areas and why no explicit list (which would be open to criticism) has been provided.

We would also like to know **who in the European organisation is really accountable for their decisions.**

Indeed, Parliament is not accountable to anyone (except during elections, which – see above – cannot be considered as a counter-power) because there is no provision for it to be dissolved.

The European Council is not accountable to anyone at the European level. One has to rely on its members' accountability at a national level in order to bring them to account one by one. The obvious difficulty of organising this accountability, since we are talking here about Heads of State, cannot be of any consolation, leading as it does to a certain irresponsibility at a federal level.

The Council of Ministers is not responsible to anyone at the European level. (Again we have to rely on accountability at a national level in order to bring its members to account one by one). Here again, we cannot be consoled by the difficulty involved in organising the accountability of ministers who embody a form of popular sovereignty which is not in itself European, since it leads to an absence of responsibility at a level where decisions are taken. The implementation of such accountability appears both complicated and illusory.

The European Court of Justice (ECJ) is not elected and **its judges are directly accountable to the members of the executive power who have appointed them- an incredible state of affairs**. So the Court is also beyond the control of Parliament or the citizens (this often happens, but at least normally the judges are truly independent). There is **no possible recourse** against the Court's decisions despite the fact that it has **immense powers** at its disposal, since it **interprets** all the texts and **arbitrates** in all conflicts. How can we talk of democratic institutions? [32]

The European Central Bank (ECB), not elected and strictly independent from public authorities, **cannot be controlled** either. It is therefore **not accountable** despite the considerable impact its decisions have on the daily lives of 450 million Europeans (see above).

Aren't we entitled to feel that such overall absence of accountability in our institutions is extremely disquieting? Should we really be in such a rush to ratify a text like this?

In the end the Commission is the only body exposed to any risk [33]: first of all, it is liable to **global censure** from Parliament (however only with a two-thirds majority, which is a lot; and only as regards "the conduct of its affairs", which makes the possibility of censure somewhat remote); secondly, the President of the Commission may demand **individual members to resign.**

But is the Commission really the centre of power? Opinions on the subject vary, but on the whole I would tend to agree with Yves Salesse [34] when he says that **the real power is detained by the Council of Ministers (which is not accountable to anyone) and that the Commission is used as a screen, a very convenient scapegoat allowing the ministers to make the law while claiming: *"It's not me, it's the Commission which is responsible, there's nothing I can do, I can't force it: it is independent…"***

Nevertheless the Commission is clearly an important body. For instance the Commissioner for International Trade, appointed for the duration of the mandate, is **the sole representative of Europe in all international negotiations (WTO and others).** A huge amount power is thus in the hands of this one individual. He is the one who will negotiate the GATS (the General Agreement on Trade in Services, a giant project in deregulation[35], a world version of the Bolkestein Directive) in the name of all Europeans, but in strict secrecy. **He doesn't give any account of the negotiations he is carrying out to Parliament,** although this agreement is likely to bring drastic changes into the lives of people in Europe. **Parliament cannot call him to account** [36].

At this point in time we can already see tangible elements that point to dictatorial abuse. And the "constitutional Treaty" consolidates for years an institutional imbalance that allows it.

The Commission can be censured by Parliament, but a two-thirds majority is required, which means that the **Commission may govern 450 million people with the agreement of only one third of Parliament**.

The **voting system** itself (list system) guarantees party leaders a seat in Parliament, which means they are hardly likely to feel they will be held accountable when it comes to elections. So many authorities who are not accountable, a generalized absence of responsibility… What is left of democracy? Where are our safeguards against the arbitrary use of power?

Apparently for the last twenty years the textbooks for students of Political Science have been using the expression ***"democratic deficit"*** with regard to the European Union. This is a very euphemistic term to describe the neglect of citizens whose only fault has been to put their trust in those they chose to defend their rights.

It seems to me that **all citizens should very carefully analyse** this undermining of democracy: almost **every body in the European institutions seems to be unaccountable to anyone; what people want seems to have little importance to those in power and a specific economic policy is being imposed for a long period of time.**

How can analysts and commentators ignore these issues as if they were unimportant? Do we want a Europe at any cost? Any old Europe? Even an undemocratic Europe?

Isn't one allowed to discuss it, without being branded anti-European ?

The argument that says *"it is the same everywhere"* is of no reassurance to me; on the contrary, it is even more worrying. While most citizens neglect democracy, hypnotised as they are by adverts, football and television, others are actively, if discreetly, working on the subject.

We are being told *"this text is better than before, you would have to be stupid to refuse to move forward."* This hides the fact that moving forward is not the only thing we would do: we would condone, reinforce and **lend popular support to those texts which have so far managed without it** (with the exception of *Maastricht*, at least for the French), with the results we know.

Even if it were better than before, this text is dangerous. *Montesquieu* would turn in his grave…

How can one expect that people should **of their own accord** accept a reduction in democracy, accept to do away with the various safeguards they need to protect themselves against the law of the jungle?

We are asked to believe that these defects are more than compensated by spectacular advances:

Those who applaud the creation of a *referendum by popular initiative* validated by a million citizens [37] can't have read the text properly. The treaty only mentions a right of petition which has absolutely **no binding effect** on the Commission. The commission is **invited** to reflect on it, and can throw it out without any justification [38].

A reader has just sent me the Constitution of Venezuela. There I found practical examples of an authentic democracy: article 72 allows 20% of registered voters to demand – and 25% to bring about - the **revocation of any elected representative** and a new round of elections. You need serious political courage and a real understanding of democracy **to submit your own power in this way to the permanent possibility of censure by the citizens.** The fact that a revocation at the initiative of the people is only possible in the second half of the mandate and only once during that mandate dispels all risk of instability. This procedure has been used several times without creating havoc. Provisions are made for other referenda at the initiative of the people **to create or to annul laws**. In Europe our institutional actors are a long way from such political responsibility, both at national and European level. Article I-47.4 of the ECT in this respect is a poor substitute!

In the same way, all those great general and **generous principles** which all the radio and television channels, all the newspapers and official adverts keep harping on about, represent **in fact a regression from our present rights** [39]. Furthermore, **the binding character of these principles is judged highly controversial** by the best legal experts and many contradictory arguments can be heard on the matter [40].

The whole text is **misleading** and masks a deadly attack on democracy. Over the past fifty years of Europe's construction, little by little, stealthily, while shamelessly denying it, **the national executive powers - both left and right - have been trying to do away with parliamentary control where it is most needed: in the economic field. More generally these powers are trying to dispense with all real accountability in most of their political decisions.**

Fifth principle of constitutional law: a democratic Constitution has to be established by an assembly which is independent of the powers in office

A Constitution is not granted to the People by the powerful. It is established by the People itself, precisely to protect itself from the arbitrary use of power.

On the contrary, the European institutions were written (over the last fifty years) by politicians **in office** who are thus obviously both **judges and counsel**: whether from left or right, having to draw up themselves the constraints which were to hamper them in their daily activity, the persons in charge, (it is only human, but also foreseeable), were led to a dangerous **bias**.

This, again, is unique as far as democracies are concerned.

And one can observe the result, a true caricature showing what should not be done: in some selected economic domains, an Executive totally free of control; almost all bodies of the Union unaccountable at their decision level, a semblance of democracy riddled with falsehood, some small progress paraded, but a true undermining of safeguards against the arbitrary use or power.

The only reliable way to create a balanced and protective fundamental text is a Constituent Assembly, one which is independent of the powers in office, elected to work out a Constitution, elected for that purpose only, and revoked immediately afterwards, fully respecting a very public and very contradictory procedure [41] (in law, the word *contradictory* means that opposing parties must have the right to express themselves fully and completely).

It is the citizens' duty to demand this procedure if the political leaders try to dispense with it.

The fairly varied composition of the Convention presided by Valery Giscard d'Estaing (including many personalities, some of great value) is not a satisfactory argument: we are still miles away from a Constituent Assembly. Its members were not elected **with this mandate**, they were not all independent of the powers in office, **but above all, they did not have the power to write a balanced and democratic text: they could only validate, compile (and modify slightly) the former texts written by actors who were both judge and counsel.** [42]

Furthermore, the **rewriting** of the text by **governors in office**, over an entire year that followed the Convention's submission of its proposed text, is quite scandalous, constitutionally speaking [43]. It is not the mandate of the power in office to write the law of the law. The State is not the people.

By drawing up a Constitution by means of a **treaty**, a procedure far less constraining than a cumbersome Constituent Assembly (public, tediously contradictory and validated directly by the People), parliaments and governments from left or right have acted as if they **owned** popular sovereignty, and **this treaty, like the former ones, can be perceived as an abuse of power: though they may indeed have been elected, those we voted for were never given a mandate to surrender our sovereignty. It is for the People, directly, to make sure that the conditions of this transfer** (in my opinion desirable in order to build a strong and peaceful Europe) **are acceptable**.

I profoundly respect, naturally, all the eminent members of the Convention, but I simply believe that they had no mandate to do what they did.

Besides, one is stunned to see **many major politicians daring to regret publicly that the TEC be submitted to a referendum**, pointing that all this would have been far less complicated and uncertain if the Parliament had voted upon it as one man, even without reading it maybe [44]... **What value do the People have in the eyes of to our elite?**

By the way, the numerous governments who have had this text ratified by the national Parliament [45], rather than by the people (referendum), are committing a **true breach of honour:**

the people of these countries have been deprived both of a debate and of the direct expression of their opinion, a possibility which would have permitted them to resist the democratic regression exposing them to the arbitrary.

What means is left to these citizens to resist this confiscation of their sovereignty? [46] There is one solution more peaceful than riots: **a firm and determined *No* of the French people.**

This disdain for the people and their true choices is quite telling of the silently growing danger: our elite, from left or right, does not trust democracy, and is deliberately, gradually and slyly depriving us of it.

Conclusion

The TEC therefore seems dangerous for many a reason. What sort of replies to this contention have I received so far? (My apologies for any omitted arguments, but it is an immense task to compile all this).

To allay my fears, some tell me that **progress** has been accomplished, but in fact it all depends on the reference chosen by which to measure progress: if we compare with the Nice Treaty (which I find deplorable, democratically speaking), it is indeed "better", it constitutes "progress" and we can therefore understand why some refer to the Nice text in order to try and sell us the TEC.

But if I refer to the national democracy I am losing in order to gain the "European democracy", it is objectively a step backwards I am being asked to endorse: a step backwards as regards accountability for the daily acts of all powers in office, a step backwards as regards control over the executive power in any of its (X) reserved domains, a step backwards on the level of fundamental rights, and above all, a **step backwards concerning the economic policy imposed upon us,** clearly for many years to come, **most probably a cause of chronic unemployment and slack growth in Europe**.

Let us not forget that this is the first time in fifty years I am being asked my opinion: as a citizen, I am not in any way a signatory to the Treaty of Nice, nor any of the earlier treaties. With Maastricht, I was asked about currency and economic constraints, if I remember well, not, or hardly, about the balance and control of powers. And as for the economic constraints (the convergence criteria), we were promised we would be consulted in order to assess the outcome. Was the outcome ever assessed? Do we have good reason to be satisfied with the economic performance of those institutions whose purpose, nonetheless, is more economic than political? Read Fitoussi and Généreux again.

Why should I restrict myself only to evaluating the little difference between Nice and the TEC?

Why shouldn't I have my word ("I", as the average citizen, naturally) about the whole of this overall formidable "coup" the national executive powers have carried out, during the last fifty years, over the citizens' control of policies conducted?

I do not see why the text submitted to the vote should be artificially reduced to the 50 or so new articles of the TEC.

When I see eminent experts claim there are only 60 pages to judge, 50 tiny little articles, saying the rest already exists and is therefore outside the scope of the debate, not submitted to the referendum, when I hear this, I think to myself (and I have the feeling that in this I am not completely alone) it is time to wake up.

If one refuses this overall picture I am talking about, if this fifty years' period is sacred, deemed untouchable, irreversible, if one imposes Nice as a reference, then, indeed, the TEC is a *"good text"*, given that *"we make progress"*; but doesn't it seem to you that a tiny part of the demonstration is missing, and that we are thus being asked to validate a path that is not the right one?

It was no doubt a mistake in fact (for those building this Europe so lacking in democracy) to have labelled this text a *Constitution* (they aroused our suspicion), and another mistake again to have submitted the text by means of a *referendum* to those arrogant grumblers that are the French; but for us, citizens, I have a strong feeling that these two mistakes hand us a historical opportunity: that of seeing the danger clearly and resisting at last.

There is one undeniable progress in this treaty... It is this new possibility given to us to break free from the trap: Article I-60-1: "**Voluntary withdrawal** from the Union. Any Member State of the Union can, in conformity with its constitutional rules, choose to withdraw from the Union". This right currently does not exist, which means refusal of this text drops us into another trap, that of Nice. Some choice!

At the end of the day, this "constitutional treaty" brings to light all that has been decided without us for such a long time.

In a way, *the word is out now*, and citizens can see the danger at last, and resist.

One major error, probably, is to favour economics over politics, to give away the ability to act, to blindly trust the markets, to give the helm to economists who should, instead, stay working in the engine-room (Bernard Maris, in his delightful *Antimanual of Economics*, suggests this, tongue in cheek).

By setting up freedom as a superior value, instead of fraternity, by institutionalizing competition instead of collaboration and mutual help, by enforcing it in the supreme text via the dogma of absolute competition, in other words a morality of *"every man for himself and against everyone else"*, by destroying State regulation, as a safeguard of the general interest, in order to install market regulation instead (an addition of individual interests), the neoliberal economists are threatening the foundations of democracy so to speak, in order to free the most prominent economic decision makers from any control.

The systematic deregulation carried out in Europe (by its institutions, its policy and the gridlock of the unamendable Constitution), and more widely throughout the whole world (WTO, GATS, TRIPS) is a regression of civilisation, a return to the barbaric free for all in which the strongest win [47].

Out of optimism, naive faith or carelessness, modern people let their most precious possession be jeopardized, the rarest of assets on this planet, one which underlies the serenity of their daily life: the various protections against the arbitrary abuse of power, spreading from the heart of corporations (social rights) all the way through to the nation (democratic institutions controlled and revocable).

Democracy is not eternal, it is extremely fragile, even. By thinking it is invulnerable, we are gradually letting go of it.

Even after rejecting this text, we will still have to fight to keep democracy, and we will need to carry on militating to force our representatives to build another Europe, one that is simply democratic. I have no ready made alternative, maybe other people have. If not there is a need to imagine and elaborate one.

This duplicitous founding text is presented to the citizens through a **debate which is itself duplicitous** [48].

Several journalists, assimilating opponents to this text with opponents to Europe, dishonestly create a confusion: the double equation *"Yes to the treaty=Yes to Europe, No to the treaty=No to Europe"* is a **blatant lie**, an inversion of reality, a **misleading slogan never demonstrated**, intended to seduce those who have not read the treaty or studied the arguments, strong though they are, of those who oppose this treaty precisely to protect the prospect of a democratic Europe.

Journalists are an essential, modern defence to protect democracy. *Montesquieu* could not foresee the paramount importance they were to attain, but what is certain is that the immense power of journalists could itself do with a true counter-power (from this point of view, we may wonder whether we do not commit a fatal error in letting media be bought and sold like any other commercial product) and their responsibility here is historic.

More than 70% of the media time for the *Yes*, less than 30% for the *No*, a whole apparatus which resembles State propaganda, with such benign questions when a partisan of the *Yes* is interviewed, and questions so ill-intentioned when it comes to a partisan of the *No*...

Can this project be honest if it necessitates so much malice? Check out the very detailed file (in French): http://www.acrimed.org/article1950.html

So far, the *Internet* has been the most democratic media, uncensored, the best tool with which to resist. If this message seems useful to you, spread it quickly through your own network and beyond Internet, on paper.

Some advice to supporters of the TEC (I cannot help them, I have not found myself the arguments they are lacking ;o) : **to reassure those who perceive a great danger in the TEC, it is a bad strategy to underline what is good in the TEC: this is clearly not sufficient reassurance.** One does not sign a text if it contains merely one unacceptable sentence, no matter how many marvels and beauties it may contain aside from that. And this treaty includes many unacceptable points.

They should, instead, convince us that there is no reason to worry, for example, that each Institution of the Union is fully accountable for its acts (beyond the mere election process) throughout all the phases of rulemaking, that the economic policies are not as irreversible as they seem, that the future will of the European people is guaranteed to be respected... This proof should of course be founded on the text rather than on empty pledges or insulting statements.

As for opponents to the treaty, they will not really convince those who, for the moment, vote yes while holding their nose (they are so numerous...) unless they offer a credible alternative, a plausible prospect.

The pile of messages I receive daily has a unity, a coherence, a strength: whatever the political side (and they really come from all sides), the general feeling is fundamentally pro-European and demanding as far as democracy and the respect of the people's will are concerned. And these messages are generous and humane (except those horrible ones insulting me, but they are not so common).

I can see in them a common stand (or the seeds of a stand) for politicians to find a new inspiration, to unite differently, to modify their programmes and imagine a project for the aftermath of the No, a true Europe dedicated to people, not States.

We surely have two or three years in which to rally our European brothers and trigger this momentum everywhere, don't we? And what if it was the people of Europe who started demanding firmly from political parties this democratic renewal, starting at grassroots level, communicating via the net to passing on the word without necessarily respecting party political divisions? You may say that I'm a dreamer...

I am becoming aware, indeed, that it is the States (or their political personnel?) who refuse Europe and reject the transfer of sovereignty.

Shouldn't we start from scratch: ask the 25 people if they want to unite to create a eEuropean republic? Then start, **only with those countries who wish to**, a genuine constituent process, organised by the powers in office, but independent from them ?

This is worth thinking about, isn't it?

I heard a sentence on the radio a few weeks ago, a sentence that hit the nail on the head, that keeps resonating in my brain and that is changing me. It says:

we are not born citizens, we become so.

Étienne Chouard*, Trets (Marseille).*
Updated 2005, 17 june.

I here repeat that I have **no authority** at all to explain the European law that I am in the process of discovering, step by step (and from surprise to surprise).

You may e-mail me at etienne.chouard@free.fr

You may **download** the **last version** of this document from http://etienne.chouard.free.fr/Europe
and redistribute **the link** as you see fit.

Post-Scriptum *(3 & 12 April 2005)*

This text had an unexpected success and caused thousands of reactions. I receive hundreds of messages daily, almost always enthusiastic, sometimes critical, which enabled me to make progress. Some questions, some doubts also, keep turning in, and I would like, in a few words here, to answer them and anticipate on those to come.

I am a teacher of law, economics and computer science, in a BTS (French syllabus), in a college of Marseilles, I am 48 years old, have four children, I do not belong to any party, trade union or association. In my life, I have made more paraglider than politics in which I am virgin, an absolute beginner who "awoke" six months ago, and I will not dwell there long (free flight is a hard drug which will call me back quickly).

I am therefore nobody's "submarine" (I recently received this funny question).

I am just an average citizen :o)

I received proposals for publication on sites or in newspapers which I accepted without controlling whether the CIA or the KGB acts as writing pad. Many sites already published links to this text, sometimes without telling me about it, and rightly so.

I would like to pre-empt probable libels to come, based on hasty political labelling for an easy discredit. ***I am not a politician, I do not wish to become one, nor do I claim I am a lawyer to impose my point of view in an arrogant manner but to explain my purpose, besides I am not really a lawyer, rather, I have received a law training mostly, it is, anyway, not very significant for I would like the debate to remain focused on the bottomline*** *without deriving on pointless and sometimes malevolent personnal quarrels or accusations of intentions of the kind that political commentators have learned to master.*

Don't blame me for all what this document turns into, for all foreseeable exploitation and manipulation. Everyone can imagine that it fled out of my control, and lives a life of its own... :o)

I am not trying to manipulate anybody: I may be mistaken in my analysis, I am merely awaiting that one proves this to me and a respectful debate is always seminal: "light springs out of discussion" my father would tell me when I was a child.

Please, trust the ***ideas and arguments****, come into the debate as if your counterpart were in good faith, without dark hidden agenda, and do not let your analysis be polluted by parasitic considerations.*

This significant debate belongs to the common run of people, such is the beauty of democracy, ***do not let it be confiscated by so-called experts****. Read, reflect and speak without shame :o)*

Do not blame me for the potential errors as if I were dishonest: they are bound to occur, are envisaged, and they are in no way permanent*, if one sincerely seeks to identify the true stakes of this treaty: reckon that the task is hard given this complex and sibylline text, and that* ***one is much stronger with several others to help refine a criticism*** *which will (perhaps) eventually become irrefutable.*

Lastly, you may have understood that this ***text evolves/moves****, improves, pending your contributions, it is thus* ***dated****. To pass the word, prefer sending a* ***pointer*** *to the site, rather than a fixed and frozen pdf document, to be sure that the most recent version circulates.*

I here express a warm thanks to the thousands of persons who, it is moving, I can assure you, have expressed their thrill ever since I launched this call like one sends a bottle to the sea. I wanted a debate, I have been fulfilled :o)

Also, thank you to those who, deeply in disagreement with my iconoclastical analyses, have written me splendid, very learned and documented, respectful mails, understanding my fear without sharing it though. These counterparts of all origins really made me accomplish great progress, I am changing, ***I strive to answer them individually but cannot do it like I hoped****, I must have 1500 mails in backlog (4 000 mid-may)...*
Don't be cross with me, it is simply not possible, you are too numerous.

Thank you all for your attentive and kind listening :o)

Important Clarification (21st april 2005)

I have just learnt that some politicians are being called upon, during their meetings, by citizens asking: *"What have you got to say to Etienne Chouard, law teacher in Marseille, when he says (quotation of Chouard)"*...

I have also just received a pdf file bluntly labeled *"Marseille Law University"* with the march 25th version following this invented title, that first version which still bore troublesome errors (about Turkey and the length of the Nice treaty, amongst other).

I now understand better some infuriated faculty teachers' messages crying out for **forgery**.

If this is how things evolve, they are right, one really shouldn't read me as if I were a specialist of international law, I should not be presented as such, this is a misunderstanding: **I have strictly no authority to say the communitarian law, and I make, like every body nowadays because this text is not simple, errors.**

I made it clear, as early as in my introduction, that, only six months ago, "like anybody", I was paying little attention to Europe and did not know much of communitarian law. I keep saying that I may be wrong and that I am precisely seeking to make progress. **It is paradoxical, and, truly, dangerous for the quality of everybody's information, that I be mistaken, after 15 days only, for "the faculty teacher in public law who is an authority".**

This misunderstanding can be attributed to me, due to the style I used in the beginning, but this document was not aimed at the whole world then. The quick interlinking of facts also has created this misunderstanding.

It is essential to re-establish the reality of my message, which is moving, much to my dismay, way beyond what I had first imagined: to fully understand what I mean, refer to the "Caution" page of my site, which I updated yesterday morning.

Public callings should rather be thus worded : *" What have you got to say to Etienne Chouard, citizen in Marseille, when he says (quotation)"*.

I speak as a citizen. I have withdrawn in this version of my text (too late, I must admit, I had not seen the problem coming) this litany "isn't it the teachers' mission...?".

I insist: there is, at the moment, a great debate which is gaining momentum amongst citizens, in order to better de-cipher this complex text which may end up being our Constitution. I see daily, through hundreds of messages, people discovering today the importance of a Constitution in their daily life, and they invest into the ECT.

I find it remarkable that standard citizens invest so much into the text that tells in their name the law of the law.

I wish we had more time to communicate and exchange.

Please, get rid of older versions of my text and let us discuss frankly on the current state of our respective thinkings.

Our exchange really got me growing, it is true.

I am getting aware of an almost **overall lack of responsibility** in this "Europe-which-needs-a-constitution-to-be-stronger". I notice the little importance granted to the citizens to act upon the policies which govern their lives. Yes, of course we do need a Constitution. But does this one truly protect the people supposed to unite to be stronger?

We have a true problem with the democratic relationship between the people and their elite.

How complicated it is to evaluate this text... and what terrible disease it is revealing in our *"City"*.

Notes

[1] I am a teacher of Economy and Management, in “BTS” (a technical degree in Business, at the undergraduate level), at “Lycee Marcel Pagnol”, Marseilles (a French ‘Lycee’ that covers both high school and college levels), For years, I have taught Civil, Commercial and Constitutional Law in “Terminale” (last year of French high school), as well as Fiscal Law in BTS of accounting. Today, I have somewhat specialised in Office Computer training, and I am also the administrator of my college’s PC network (150 machines).
I invoke my job as a teacher to explain my taste for clarifying and lecturing, ***not*** **as a claim for any kind of ‘authority’, which, precisely, is not my point. Indeed, I am not a University Professor, I am not a Public Law professor and I am not a specialist in Constitutional Law**. My training in Law (Master's degree) has given me a taste for legal stuff, but **I am writing here as a simple citizen**, surprised as I have been by the absence of debate, most notably from the beginning of year 2005. I certainly make mistakes, but I am happy to correct them, as soon as someone points them out to me.
I claim that all citizens, while mostly ignorant of the Community Law, like me, should nonetheless be invited to think about this Constitution. Moreover, this fundamental text should be written by representatives that have been elected precisely with that mandate, and with a political program adapted to the circumstances. **In my opinion, this debate should not be confiscated by the specialists.** Maybe it will be.
Today, this text ("A bad constitution...") has totally escaped my control. All I can do, and this was the initial idea, is to keep correcting my mistakes or bad formulations, or sometimes to add complementary notes, according to my readings, which I am still pursuing, and thanks to the endless advice from hundreds of constructive readers who email me everyday.

[2] Applicability duration of the text: **Art. IV-446 :** "This treaty is concluded for an unlimited period."

[3] List of the domains where Europe is competent: **Article I-13:** "Areas of exclusive competence §1. The Union shall have exclusive competence in the following areas:(a) customs; (b) the establishing of the competition rules necessary for the functioning of the internal market; (c) monetary policy for the Member States whose currency is the euro; (d) conservation of marine biological resources under the common fisheries policy; (e) common trading policy. §2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope." Article I-14: "Areas of shared competence: (...) §2. Shared competence between the Union and the Member States applies in the following principal areas: (a) internal market; (b) social policy, for the aspects defined in Part III; (c) economic, social and territorial cohesion; (d) agriculture and fisheries, excluding the conservation of marine biological resources; (e) environment; (f) consumer protection; (g) transport; (h) trans-European networks; (i) energy; (j) area of freedom, security and justice; (k) common safety concerns in public health matters, for the aspects defined in Part III.(...)".

Among exclusive competencies, see **article I-13, §1:** "(e) common trading policy."...
National Parliaments are then totally deprived, for example, from any ability to influence international trading agreements (GATS, TRIPS and others avatars of WTO), while the daily lives of citizens will be deeply affected by such agreements, which are put together in the greatest discretion.

[4] **Primacy of European standards over all other standards, national or international**:
Art. I-6: "The Constitution and the Law adopted by the Institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States."
This is the first time that a European treaty, as it claims to be a Constitution, expresses this rule and, more importantly, nothing can force the European Court of Justice (ECJ), the only final arbitrator (without appeal), to interpret this text in a restrictive manner, as did the French Constitutional Council (CC, 19 nov. 2004, 505 DC): it is even highly probable that the Court will apply it to its full possible extent, which means that **any European norm will prevail, even over the Constitutions of members States**. See the very interesting analysis of **Frédéric Rouvillois**, professor at Paris V University, in the chapter 1 **"The double language of the Constitutional Council"** from the small book (in French) "La nouvelle Union européenne. Approches critiques de la Constitution européenne", (éditions XF de Guibert).
Article I-12: "§1. When the Constitution lends to the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so-empowered by the Union, or for the implementation of Union acts.".
See also **"The primacy of the community Law over the French Constitution: implicit repeal of the Constitution"**, by **Armel Pécheul**, *professor at Angers University* (20 p.), chap. 3 of the same book "La nouvelle UE. Approches critiques ...", (XF de Guibert):
"In its decision n°2004-505 DC dated 19 nov. 2004, the French Constitutional Council states simply that the constitutionalisation of the primacy principle doesn't go over what is presently required by the European Court of Justice. But, precisely, this is important. The Luxemburg Court had already d all about that and what has been said is essential because it imposes the primacy of the European Law over national Constitutions !"

A bit later, p. 54, *Armel Pécheul* recalls the **decision Tanja Kreil** dated 11 january 2000 (ECJ, aff. C-285/98, Rec. I, p. 69) in which **a simple Council directive dated 1976 was imposed over specific and sovereign dispositions of the German Constitution (article 12) and in a domain which was not within the scope of the community because it was in the domain of the military defense.**

I quote *Armel Pécheul*, in his conclusion of a rigorous argumentation: "The essence of the French Constitution, the DNA, the specific and express dispositions, dispositions inherent to its fundamental structure are no longer protected by the watchdog of the Constitution (i.e. the Constitutional Council). The latter has given out the keys of our Constitution to European judges. These aren't even in the hands of the constituent power, because the French People is called to abandon of power by ratifying the Treaty. Then yes, the essential is really at stake, that is, as said by President Mazeaud: the very existence of the French Constitution itself."

What are the different standards planned by the Constitutional Treaty?

Art. I-33 : "**The legal acts of the Union**:

To exercise the Union's competencies the institutions shall use as legal instruments, in accordance with Part III, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

• A European **law** shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.

• A European **framework law** shall be a legislative act binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

• A European **regulation** shall be a non-legislative act of general application for the implementation of legislative acts and of certain provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as to the result to be achieved, upon each Member State to which it is addressed, but leaving the choice of form and methods to the national authorities

• A European **decision** shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only to them.

• **Recommendations** and **opinions** shall have no binding force."

[5] See the arguments of **Olivier Gohin**, in chapter 4 of the small book (inFrench) "La nouvelle Union européenne. Approches critiques de la Constitution européenne", éd. XF de Guibert.

Some professors go further: "the **legal personnality of the Union**, instituted by article I-7", according to **François-Guilhem Bertrand**, professor emeritus at University of Paris XI, "shall be read with the decision dated 31 march 1971 of the Cour of Justice AETR, which decides that the personnality given to Europe erases those of the menber States and forbids them to manifest themselves when Europe is voicing" (same book).

This might be exagerated, or this might be the reality; this might be good or bad, I have no certitude about that, but **at least we could debate on this point, instead of pretending it is nothing,** and arguing about the sex of angels and other futilities, such as the 'Charter' or the right to petition, which impose virtually nothing to no one.

[6] We will find most of these principles, among others, in the book of **Paul Alliès**, political science professor at University of Montpellier I, (in french) **"A constitution against democracy ? Portrait of a depoliticized Europe"**. Again a really thrilling book. Extract (each word counts) :

"The European Construction has silently endangered the tradition of popular sovereignty, which has legitimized the exercice of power by State authorities, whose decisions have only been an emanation of the sovereign People. And it has done so in two ways: On the one hand, the **European constitutional Law ignores any constituent Sovereign** ; which means that decisions from the Authorities are attributed to an entity, the Union, which is not a political community. On the other hand, **it is more and more difficult to attribute national standards**, as derived from European norms, to the People, which the Constitution of each member State proclaims to be theSovereign.

We are entering an unprecedented system, that of the Union, where neither the existing treaties nor the Constitution mention any "Sovereign". **None of these texts has been able to design a legitimate source for the power of the Union**, to better pretend respecting the heritage of a popular sovereignty nationally divided, State by State. **The problem here is not to know if a European People does exist, sociologically or culturally. It is to make a clear decision as to the political nature of the Union, through the foundation of the power it holds.** Until now, the constituent power used to invent a People and to organize its life. Now, a Constitution invents an authorithy with neither subject nor object." (page 57)

[7] **European Constitutional Treaty (ECT)**: How to get the **full text**?

http://europa.eu.int/constitution/download/print_en.pdf

To read before vote:

a/ Treaty establishing a Constitution for Europe - 349 pages.

b/ Protocols and annexes I and II - 382 pages. Document named "Addendum 1 to the document CIG 87/04 REV 1.

c/ Declarations to appendix to final act of the CIG and final act - 121 p. Doc. named "Addendum 2 to the document CIG 87/04 REV 2. Total: 349 + 382 + 121 = **852 pages** in the version of end of 2004.

The version **presently proposed** (mid april 2005) is now **more compact**: Only one pdf file: **485 pages**. While writing densely, in small font, and on broadsheet newspaper pages, one can fit everything within less than fifty pages.
To compare things, French and US Constitutions have each one around 20 pages (A4 or US Letter format).
In more standard units, that is less subject to typographic variations, let's count words and characters: the European Constitution contains 70 904 words, that is **14.7 times the French Constitution** (or 441 895 and 46 515 characters, respectively).

Quantitative argument, from the partisans of the Treaty: *"To unite 450 millions people, the founding text cannot be short."* The actual reason behind such an extravagant length (448 articles), they add, lies in the Third Part, so it is useless to look for other reasons. Interested by this quantitative approach, I have looked into the Indian Constitution, which rules one billion people, and I found... 151 articles. ;o) http://www.oefre.unibe.ch/law/icl/in00000_.html
Then again, the US Constitution, which rules 300 millions people, is totalling 7 articles. ;o)

Here is an interesting link, which allows to **compare numerous Constitutions from all over the world:** http://www.constitution.org/cons/natlcons.htm

[8] However, despite its length, **all is not there**: an information so essential as the **definition of the "Services of General Economic Interest"**, (SGEI) cited in articles II-96, III-122, III-166), which must not be confused with Public Services, is not to be found anywhere in the 485 pages: on this occasion, you need to consult the **"white book"** of the Commission, to find out that these Services are not synonymous with "Public Services": http://europa.eu.int/comm/secretariat_general/services_general_interest/index_en.htm, p. 22: "The terms "service of general interest" and "service of general economic interest" must not be confused with the term "public service" (...)".

[9] You should read all the pages till the end: **The interpretation of the Charter** of fundamental rights is described **outside** the Constitution itself, in a text called Declaration 12 (page 432): **the Preamble to the Charter** establishes that "In this context, the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charterand updated under the responsibility of the Praesidium of the European Convention."
In this Declaration n°12, you can find sometimes the **exact opposite** to what the Charter claims so loudly. Thus, once the right to life has been affirmed and death penalty forbidden in the **article II-62** of the Charter, the **article 2** of declaration n°12, page 435 (who speaks of a readable text?) qualifies: "Deprivation of life shall not be regarded as inflicted in contravention to this article when it results from the use of force as made absolutely necessary:
(a) in defence of any person from unlawful violence;
(b) in order to lawfully arrest or to prevent the escape of a person lawfully detained;
(c) in action lawfully taken for the purpose of quelling a riot or insurrection."
The same article also states: "A State may make provisions for the death penalty in its Law , with respect to acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the Law and in accordance with its provisions...".
So we can see that **all is not said in the Charter itself, and that you should carefully read all the pages**.

[10] **The danger of the "non-legislative acts"**, which allow to non-parliamentary bodies (not elected) to create freely binfing rules about general matters, has been denounced in the counter-report of the conventionals judging the treaty as being non-democratic. An interesting document, to read here: See annex III, pages 21 to 24:
http://europa.eu.int/constitution/futurum/documents/contrib/doc180703_en.pdf
About juridic acts of the Union, see **article I-33** and note above.

[11] Extract of the course of administrative law of J. Morand-Deviller (éd. Montchrestien), page 256 : "This Such an inflation of texts, more and more talkative and confusing, is a troublesome problem. This tendancy, so **detrimental to legal safety** and so opposed to the nice rigor of the French Law, has been denounced in energic terms by the State Council, in its public report for 1991: "overproduction of norms... legal and regulatory logorrhea... **inflation means depreciation: When the law babbles, the citizen will only listen to it distractly...** If we don't pay attention, there will soon be two categories of citizens: those who will be able to pay an expert to turn around the subtleties to their profit, and the others, endless wanderers of the legal maze, abandoned by the law state." **The Constitutional Council has made the principle of "accessibility" and "legibility of the law" an objective of constitutional value** (decision dated 16 December 1999)."

[12] Entire books have been written to vigourously denounce such **institutionnalisation of neoliberalism...** The catch is, before one can understand their arguments, one needs to read them :o)
We can cite **a few articles in the Treaty,** which carry neoliberalism in themselves (neoliberalism

can be defined as depossessing the States from their means of intervention in the economy, to the benefit of individual freedom, which invariably ends up in the law of the strongest) :

- **Article I-3.2:** "The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and an internal market where **competition** is **free** and **undistorted**."
  If we understand "not distorted **by large companies**", we can only approve.
  But if we understand "not distorted **by States**", we see how the neoliberalism finds here some institutional roots.

- **The independance of the European Central Bank (ECB): this is a deregulation**, it means to deprive States from the monetary leverage to govern, this is dogmatic liberalism, to a degree unmatched anywhere in the world. (**Article I-30** and **III-188**).

- A tiny budget (1,27%) and the **impossibility for the Parliament to increase this budget** (no parliamentary power on the revenues), this is the **guaranty of a relatively poor Europe , therefore limits its interventions to a miminum: this is neoliberal**.

- **Article III-314:** "(...) the Union shall contribute(...) to **the progressive abolition of restrictions on international trade** and on **foreign direct investment**, and the lowering of customs and other barriers."
  This article bars the States from forbidding, which is called deregulation, it is ultra-liberal. The apparently harmless phrase *"and other barriers"* is new, if we refer to Nice Treaty, and it allows all future drifting: suppression of social barriers, of environmental barriers, etc.

- **Article III-148:** "**The Member States shall endeavour to undertake liberalisation of services beyond the extent required by the European framework laws** (...), if their general economic situation and the situation of the economic sector concerned so permit."
  Every State is asked to be *"more catholic than the Pope"*, on principle.
  If this is not ultra-liberalism, what is?
  I recall that the current world context is such that the WTO and GATS deregulate methodically the whole world, which will end up killing all public services, and all forms of resistance still opposed by sovereign States to the power of large companies. Is it so urgent that the European Constitution should confirm and amplify such a dreadful tendancy?

- **Article III-156:** "**restrictions both on the movement of capital** and on payments between Member States and between Member States and third countries shall be **prohibited**."
  Again an **interdiction to forbid**, again an important leverage that is denied to member States, again sheer neoliberalism... And who is that good for? For the people?
  Anyone can appreciate the **imperative strength** (which doesn't leave a lot of space for legal interpretation in the jurisprudence) that lies in this disposition of economic vocation, and which is greatly missing from the great and good principles of Parts I and II.

- **Article III-167.1:** "Save as otherwise provided in the Constitution, **any aid granted by a Member State** or through State resources **in any form whatsoever** which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, **be incompatible with the internal market**."
  The interdiction to help any player, by any means, becomes the central principle. This is, again, a mark of neoliberalism which aims at progressively weakening the Welfare State, **even if exceptions are still maintained in the following alinea** (but for how long?).

- **Article 178:** "The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources (...)"
  "This is **a fundamental law of neoliberal economic theory** that enters the Treaty: The free market economy guarantees efficient resource allocation. This is as false, senseless and politically shocking as writing that a centralised planning economy results in efficient resource allocation." (*Jacques Généreux*, professor at Sciences Po, p. 88).

- **Article III-131** crowns it all, and makes one wonder whether one should laugh or cry (you may have to read it a couple of times ;-): "Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the internal market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security."
  You can't make that up. Bare with me: In the case of war (this is serious indeed), member States will gather (sounds good, but what do they gather for?), so as to make sure that the sacrosanct market is not affected. No, this isn't a joke. **Even in the case of war, a State cannot affect the market, and the other member States are there to make sure it won't happen.** This is as dogmatic as liberalism can go.

I stop quotations because Part III is simply stuffed with such rampant liberalism, which oozes from everywhere and shackles member States. Anyone can take note when reading the text.

The fact that some ultra-extremists across the Channel ask for more, and reject this Treaty because it is not liberal enough does not make the Treaty less of a liberal Bible. **Everyone must read the text and see for oneself the place that is left to the States and to their intervention power.**

As *Jacques Généreux* (professor at the Institute of Political Sciences, Paris) demonstrates so well, "at the end of the day, the so-called Constitution for Europe guarantees that we will get ever tougher competition and **increasing exposure to the social and ecological disasters produced by the economic war**."

Unleashed liberalism is the dogma of individual responsibility, it is the "one for oneself and against everyone else". It is the negation of civilisation and humanism.

Dogmatic neoliberalism is just as dangerous for humans as blind collectivism.

Incidentally, I found the precise definition of the (deceptive) phrase "**social market economy**". Frédéric Lordon enlightens us about it, when he recalls where the jargon came from, in his stirring paper "The social lie of the Constitution" (in French), http://www.sociotoile.net/article104.html, p. 8 and following, where we discover that **the expression actually referes to an extreme form of liberalism, even more radical than Hayek's**, in which the word 'social' has strictly nothing to do with what the French would expect from it.
"That 'social' is merely the effect of the market itself and nothing else, certainly not a control that would be imposed from outside the market." You should read this text of Lordon, it is very strong, it sheds a bright light on the deeply dogmatic nature of the Treaty (see my page 'Links and docs' on http://etienne.chouard.free.fr/Europe/index.htm).

[13] **Independence and missions of the Central Bank:** **Article I-30:** "§1. (...) The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.
§2. The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives. It shall conduct other Central Bank tasks in accordance with Part III and the Statute of the European System of Central Banks and of the European Central Bank.
§3. The European Central Bank is an institution. It shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence." and
Article III-188: "(...) neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body."

[14] See **J.P. Fitoussi**, University Professor and President of the Scientific council at the 'Institut d'Etudes Politiques (IEP), in Paris, , President of the 'Office Francais du Commerce Exterieur' (OFCE), and general Secretary of the 'International Association of Economic Sciences', interview with J.C. Guillebaud, "The policy of impotence", (in French: "**La Politique de l'impuissance**", 2005, Arléa):

- JCG : "You are saying that, basically, **obsessed by the fight against inflation, we practically have consented to unemployment."**
- JPF : **"Worse than that! In a first phase unemployment was made an instrument to fight inflation. Each "central banker" of the planet knows that, as soon as he increases the interest rates, he creates unemployment for the most vulnerable categories of the population. Not only is he aware of it, but it is precisely the reason why he does it.** Why does one increase interests rates? Because one is persuaded that the demand is too high and that companies producing at their maximum capacity could only satisfy to it by raising prices. The 'cold shower' of interest rates thus reduces the demand, and is an incentive for companies to fire people." (p. 45)
(...)
- JCG : "What do you think of the two arguments that were made in those days [after 1982] about inflation and respect of the great equilibria ? First it was said that it was legitimate (and moral as well) to fight against inflation, because it penalized the poorest ; second, it was claimed that the main equilibria should be maintained out of simple respect and generosity for future generations, in order not to overburden our children. In a way, that policy was draped into a discourse about generosity ..."
- JPF : "This was a **double lie**. First, by raising interest rates, and moreover by maintaining them high after the inflation had been beaten, one knew that this would favour those who own the capital, and that the most vulnerable categories of the population would thus be barred access to durable goods (which requires borrowing). (...) The second lie was that, by raising interest rates, one made the revenue from the debt one of the biggest line in the State budget." (P. 46)

- JPF : **"That the orientation of economic policies of the Union should be, for the most part, independent from any democratic process is both opposed to political traditions of European peoples, and dangerous for the economic efficicacy of the whole."** (p. 72)

- JPF : **"To push the metaphor a bit, one could say that the "economic government" of Europe looks pretty much like an enlightened despot who, away from popular pressures, would look for the common good by applying a rigorous doctrine –liberalism -, assumed to be superior to any other in terms of economic efficiency. Democracy would therefore not be the best political system to apprehend general interest ; it would place governments in a vulnerable position, facing the pressure from populations calling for redistribution. The power has has thus changed hands. Politicians chose to give it over to independant agencies. (…)**

But it is also true that, from the origins, the European construction was has been the work of a democracy of the elites, rather than of democracy short. Meanwhile, elites have changed (…) today they tend to assimilate the public good with the market."

The rest of the text is edifying… An important little book, to read…

[15] Pact of stability: **art. III-184** (2 pages) and **art. 1 of the protocol n°10** on the excessive deficit procedure "The reference values referred to in Article III-184(2) of the Constitution are:
(a) 3 % for the ratio of the planned or actual government deficit to gross domestic product at market prices;
(b) 60 % for the ratio of government debt to gross domestic product at market prices."
See also previous note.

[16] Interdiction to warp competition: this interdiction is everywhere in the text, it is formal and binding, including for public companies:
Art. III-166: "1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the Constitution, in particular Article I-4(2) and Articles III-161 to III-169 [rules on competition].
2. Undertakings entrusted with the operation of services of general economic interest or having the character of an income-producing monopoly shall be subject to the provisions of the Constitution, in particular to the rules on competition, insofar as the application of such provisions does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the Union's interests.
3. The Commission shall ensure the application of this Article and shall, where necessary, adopt appropriate European regulations or decisions."
Article III-167.1: "Save as otherwise provided in the Constitution, **any aid** granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the internal market."

[17] **"The politic of impotence": see the luminous little book by Jean-Paul Fitoussi** (a renowned economist) who demonstrates this rampant disowning of political leaders, out of distrust for democracy. (See except above, in note 14).
See also an exciting book by **Jacques Généreux, Professor at 'Sciences Pol' (Institute for Political Sciences, Paris), "Critical manual of the perfect European"** who also protests against the scuttling of the European economic intervention tools, and against the blind dogmatism that supports this madness unique in the world. This book is a thrilling page-turner…

[18] **"Twelve economists against the project of European Constitution"**, by *Gilles Raveaud, doctor in economy and professor (Institut d'études européennes, Université Paris VIII), and eleven others*: a remarkably cogent analysis of the current project for the Union, a project more economical than political; a must-read (French): http://www.legrandsoir.info/article.php3?id_article=2231 and http://econon.free.fr/index.html

[19] Ordinary revision procedure: **art. IV-443.3:** "A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to this Treaty. The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements."

[20] Reminder: article 28 of the 'Declaration of the rights of man and the citizen' of the year I of the french Republic (1793) stated: *"A people always has the right to revise, to reform and to change its Constitution. One generation's laws cannot subjugate futures generations."*

[21] Simplified revision procedure:
Art. IV-444: "§1. Where Part III provides for the Council to act by unanimity in a given area or case, the European Council may adopt a European decision authorising the Council to act by a qualified majority in that area or in that case. This paragraph shall not apply to decisions with military implications or those in the area of defence.

§2. Where Part III provides for European laws and framework laws to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws in accordance with the ordinary legislative procedure.
§3. Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.
- For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members."

[22] See the rivetting analysis of **Laurent Lemasson**, graduate of the 'Institut d'Etudes Politiques' in Paris, Ph.D. in Public Law and Political Sciences, and part of the faculty at Essec (A top businees school in France), "**European Constitution: Does Europe get something out it ?**", a document to read on the site of the Institute Thomas More (in French): http://www.institut-thomas-more.org/showNews/24. About **the risk of extension of institutions' power, on their own initiative and without direct agreement by the people**, see page 10.

[23] Procedure for the ratification of a new State's accession to the Union: **Article I-58:** "Conditions of eligibility and procedure for accession to the Union: (...) §2. Any European State which wishes to become a member of the Union shall address its application to the Council. The European Parliament and national Parliaments shall be notified of this application. The Council shall act unanimously after consulting the Commission and after obtaining the consent of the European Parliament, which shall act by a majority of its component members. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State. **That agreement shall be subject to ratification by each contracting State, in accordance with its respective constitutional requirements**."
These last words make the ratification procedure for the accession of a new member depend on national Law.
In february 2005, the French Parliament, gathered in Congress (i.e. both chambers at once), has changed the French Constitution so that such ratification should necessarily be subject to a referendum: article 2 of the revision law: "I. – The title XV of the Constitution is completed by an article 88-5 as follows: "Art. 88-5. – Any law project authorising the ratification of a treaty related to the adhesion of a State to the European Union and to the European Community is submitted to referendum by the President of the Republic." When the text says "is submitted", it is compulsory (in legal grammar, the indicative mode stands for the imperative).

[24] Again I send you back to the excellent article of Laurent Lemasson, page 5 (in French): http://www.institut-thomas-more.org/showNews/24.

[25] **Law proposals as the exclusive territory of the executive power:**
Article I-26: " (...) §2. Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Constitution provides otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Constitution so provides."
Consequently, for **non-legislatives** acts (see note below), the norme is **free initiative**: no need for the Commission if the Constitution doesn't mentions it explicitely.

[26] **Exclusive domains where the executive power can create law on its own:**
The principle of codecision:
Art. I-34, §1: "European laws and framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council under the ordinary legislative procedure as set out in Article III-396. If the two institutions cannot reach agreement on an act, it shall not be adopted."
Exceptions to codecision (in both directions) :
Art. I-34, §2: "In the specific cases provided for in the Constitution, European laws and framework laws shall be adopted **by** the European Parliament with the participation of the Council, **or by the latter with the participation of the European Parliament**, in accordance with **special** legislative procedures."
"Participation" possibly being simple consultation (non binding): the possibility of "laws without Parliament" seems, therefore,to be established (first surprise), but no clear list (which could be controlled) is defined (second surprise).

[27] **An antidemocratic politic tool? European decisions:**
Article I-33: The legal acts of the Union : [reminder]
" (...) A European regulation shall be a non-legislative act of general application for the implementation of legislative acts and of certain provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.
A European decision shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them."
And when recipients are not defined ?... Could one explain to citizens **what the difference is with a law, except for the source?** It looks like there is none. As it stands, I would say that the decisions have a devilish resemblance to **"laws without parliament"** (poor Montesquieu...) :
Article I-35 : Non-legislative acts :
"§1. **The European Council** shall adopt European decisions in the cases provided for in the Constitution.
§2. **The Council and the Commission**, in particular in the cases referred to in articles I-36 and I-37, **and the European Central Bank** in the specific cases provided for in the constitution, shall adopt European regulations and decisions."

We note that **the Parliament is excluded** from these "non-legislative acts" (Then why didn't they also exclude the Council of Ministers, which is presented as a "high chamber", by definition a part of the legislative power?) while, precisely, **the authors of these standards are rarely elected and often out of control**. **These "non-legislative acts" have been condemned as antidemocratic by some member of the Convention** who authored a "Counter-report" that judges the Treaty as "going against all democratic principles". See annex III, pages 21 to 24: http://europa.eu.int/constitution/futurum/documents/contrib/doc180703_en.pdf

[28] **Who nominates the members of the Commission?**
Art. I-19 states that **the expression "Council" without other precision defines the Council of Ministers:** "The Council of Ministers (hereinafter referred to as the 'Council')".
Art. I-27.2 which describes the nomination of the members of the Commission speaks of the "Council" without any other precision:
"2. The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission." What council? The paragraph which is before the article 27 makes reference to the European Council (to nominate the President of the Commission): "§1. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he or she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure."
One could legitimately wonder which Council it is that is then referred to so elusively in the paragraph 2, in other words: who nominates the members of the Commission?

[29] Laurent Lemasson, op. cit.

[30] **Censure of the Commission by the Parliament :**
Article I-26.8: "The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article III-340, the European Parliament may vote on a censure motion on the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from the duties that he or she carries out in the Commission."
Article III-340: "If a motion of censure **on the activities** of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and shall do so only by open vote.
If the motion of censure is carried by **a two-thirds majority of the votes cast**, representing a majority of the component members of the European Parliament, the members of the Commission shall resign as a body and the Union Minister for Foreign Affairs shall resign from duties that he or she carries out in the Commission. (...)"

[31] Apparently, there is **no list** of **domains reserved to the 'executive lawmaker'** (*Montesquieu* is spinning in his grave with such expressions), i.e. the domains reserved, on the one hand, because of the exceptions to the codecision (I-34-§2), and, on the other hand, because of the existence of European decisions (I-33 and I-35): One needs to go fishing down the 485 pages to find the articles which provide for a special legislative procedure (without the Parliament), or for the power to create the law by "decision" (without the Parliament).

Such domains constituting as it were a **zone devoid of parliamentary control**, one would simply like to know which are the matters at stake.

As I couldn't find what I was looking for in my 485 pages of the original text, I found the following explanations on (in French) http://www.legrandsoir.info/article.php3?id_article=2157: "**The 21 domains from which the Parliament is excluded and where the Council of Ministers decides alone are of a decisive importance**: *the internal market, most of the common agricultural policy, the common custom tariff, the common foreign and security policy, the economic policy, the social policy, the tax system...* ".

Queried about the sources of this statement, the author *Jean-Jacques Chavigné* gave me the precise articles numbers and added: "**it will never be clearly written that the Parliament is excluded from the decision. You will have to understand that the Parliament is excluded when an article of the Constitution will mention that this is the Council who decides and/or that the Parliament will only be consulted.** (JJC)"

Incredible opacity of the Supreme Text which should instead be absolutely clear, one can easily see why. And JJC goes on: *"Here are the most important domains (or parts of domains) where the Council decides alone and where the Parliament is not co-deciding: (quoting JJC and the text of the Treaty till the end of the note)"*:

"Common foreign and security policy:
Article III-295 §1: "The European Council shall define the general guidelines for the common foreign and security policy, including for matters with defence implications."

Article III-300, §1: "The European **decisions** referred to in this Chapter shall be adopted by **the Council** acting unanimously."
§2: "By way of derogation from paragraph 1, the Council shall act by a qualified majority".
The role of Parliament is defined in the **article III-304 §1:** "The Union Minister for Foreign Affairs shall consult and inform the European Parliament..."
§2: "The European Parliament may ask questions of the Council and of the Union Minister for Foreign Affairs or make recommendations to them..."

Internal market:
Article III-130-3: "The Council, on a proposal from the Commission, shall adopt European regulations and decisions determining the guidelines and conditions necessary to ensure balanced progress..."

Common Customs Tariff:
Article III-151-5: "The Council, on a proposal from the Commission, shall adopt the European regulations and decisions fixing Common Customs Tariff duties.".

Competition:
Article III-163: "The Council, on a proposal from the Commission, shall adopt the European regulations to give effect to the principles set out in Articles III-161 and III-162 [concurrence rules]. It shall act after consulting the European Parliament."
The Council is in charge of "regulations", and the Parliament will get the "recommandations".
Did anyone bother with separation and control of powers ?

Common agricultural policy:
Article III-231 §2: "European laws or framework laws shall establish the common organisation of the market..."
The expression "framework laws" without any other mention, means that the ordinary legislative procedure, as defined in **article III-396**, is applicable. It is then a **co-decision** between the Council and the European Parliament. Which is a **progress** compared to former treaties.
However:
§3: "The Council, on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitations ..."
The Council decides alone, on proposition of the Commission, so as to fix prices, aids, quotas...

Tax system:
Article III-171: "A European law or framework law of the Council shall establish measures for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation provided that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition. **The Council** shall act unanimously after consulting the European Parliament and the Economic and Social Committee."

Social:
One must distinguish **three levels**:
1st level: domain of co-decision:
Article III-210-1 :
(a) improvement in particular of the working environment to protect workers' health and safety;
(b) working conditions;
(e) the information and consultation of workers;
(h) the integration of persons excluded from the labour market, without prejudice to Article III-283;
(i) equality between women and men with regard to labour market opportunities and treatment at work;
(j) the combating of social exclusion;
(k) the modernisation of social protection systems without prejudice to point (c).

2nd level: the Council decides alone:
Article III-210-3: "... in the fields referred to in paragraph 1(c), (d), (f) and (g), European laws or framework laws shall be adopted by the Council acting unanimously after consulting the European Parliament..."
(c) social security and social protection of workers;
(d) protection of workers where their employment contract is terminated;
(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
(g) conditions of employment for third-country nationals legally residing in Union territory;

3rd level: the Union (whether it be the Council alone or the Council with the Parliament) is not competent:
Article III-210-6: "This Article shall not apply to pay, the right of association, the right to strike or the right to impose lockouts."
Which makes impossible any European minimum wage
Which depletes **article II-210-3-f** of its content.
Which depletes **article II-88** of its content: the right to strike cannot be imposed by the Union to a Member State that doesn't allow it or that would take it out from its law. This has the additional advantage not to impose a "lock-out" to a national legislation that (as the French legislation) may not recognize it. (JJC)

[32] **The European Court of Justice (ECJ): the cornerstone of the Constitutional Treaty?** The Court of Justice plays all at once the role of Cassation Court and of Constitutional Council. In France, the Constitutional Council is nominated in part by the Senate, by the National Assembly and by the President of the Republic, which allows each power to somewhat find a bit of itself represented within the Supreme Tribunal. No such thing in Europe: The Parliament has no say in the nomination of the judges, who, instead, depend exclusively on the executive power.
One should read in the book of **Paul Alliès**, *Political Science and Constitutional Law professor* at the University of Montpellier, "**A Constitution against democracy**" (in French), stirring explanations (starting on page 121) about **the danger represented by the European Court of Justice** (ECJ):
"The ECJ gradually rose up to become **a true Union Supreme Court**. (...)
The ECJ always has **one judge for each Member State**, as designated by each of them. (...) These judges are thus **nominated very discretely**, quite the opposite to what happens in the US, where the procedure of confirmation by the Senate gives a maximum of publicity to their selection. (...) They are deprived of the guaranty of irremovability. Their mandate is of six years, which is very short, especially if we consider they are eligible for additional terms in office. **This double characteristic is traditionnally considered as opposed to the independence of judges; in this case, the judges may be concerned to displease the authority they owe their nomination and career to.** It is easy to understand why governmentswould advocate this system.
When they adopted the Maastricht Treaty, the same governments rejected a proposition from the European Parliament, which suggested to set the mandate up to 12 years, with no second term possible." (page 122) (...)

"It is thank to other recourses [than the "recourse in default"] that the court has imposed itself as a Constitutional Court. By the "recourse in annulation", it is called to **control the conformity of the acts of all European institutions**, including the Central Bank, on request from one of these institutions. By the "recourse in deficiency", **it can impose to an institution the obligation to apply a standard**, on request from the bodies of the Union, of the Member States and private parties. Last but not least, by the "prejudicial recourse", created by the Rome Treaty, **it receives the requests from national jurisdictions that face litigations concerning private parties** and including questions of community Law.
It therefore holds the monopoly of the centralised and unified interpretation of the European Law in general, as well as the monopoly of its compulsory application by all the components of the Union, and by the Member States, including their national jurisdictions." (page 123)

Paul Alliès then takes the example of **secularity** to illustrate the great danger of a government of the judges: " article II-70 (...) is in absolute contradiction with the French Law about secularity dating from one century ago. (...) At the end of article II-112, **the ECJ would have to interpret the Charter** by looking at the explanations (...) of the *Praesidium* of the Convention. (...) So we see that **the base of secularity depends of the wisdom of the ECJ**. (...) **In short, all the elements are gathered so that (...) the Court creates a specific Law in term of secularity in the Union. (...) The secret of the deliberations and the absence of publicity of the "dissent opinions" do not prompt to optimism."** (Page 132)

[33] **The Commission can be censured by the Parliament**, as a whole: see note 30 above.
A member of the Commission can also be "resigned" by the President of the Commission (who is, for his part, ratified by the Parliament): **art. 1-27, last §:** "A member of the Commission shall resign if the President so requests."
But neither the Council of Ministers, nor the European Council, are accountable to anyone.
The European Council nominates the members of the Commission (**art.1-27 §2**), only the President of the Commission is "elected" by the Parliament (**art. 1-27 §1**) on proposal from the European Council. The Parliament does not choose the President. **The Parliament is not accountable to anyone either**: no one can disband it.

[34] **Yves Salesse**, member of French State Council, "**Manifest for another Europe** », page 36:

"**The power of the Commission is overestimated. In law as in fact, the power is fundamentally owned by the Council of Ministers.** (...) The Commission is not deprived of power, but it is subordinated to the Council. It is composed of politicians and civil servants from the States, who still have ties to them. (...) So, not only the power of the Commission is subordinated, but the tendency is not in favour of reinforceing it. All conspires, instead, towards the strengthening of the States' grip. **When States pretend to be surprised by a decision 'made in Brussels', they are lying.**

Ignoring the power of States has political consequences. It exonerates the governments from their responsibilities in European decisions. They are the first to spread the phrase: "It is not us, it is Bruxelles." ".

[35] See good clarifications about the **GATS** on the site (in French) www.urfig.org (by Raoul Marc Jennar).

[36] See the detail of the humiliation inflicted by Pascal Lamy to the members of Parliament who wanted to consult the provisionnal documents for the GATS in the exciting book of Raoul Marc Jennar (in French), *"Europe, the elites' betrayal"*, starting on page 64, and notably pages 70 and 71.
See also a stirring article of Jennar titles *"How much longer of Pascal Lamy ?"*, about the two agreements GATS and PITS (in French):
http://politique.eu.org/archives/2004/04/11.html.

[37] Noëlle Lenoir, then French government minister delegated to European affairs, declared: *"one million of signatures in Europe will be enough to **force** the Commission to engage a legislative procedure"* (Newspaper *'Le Monde'*, 30 october 2003).

[38] **Right of petition** : **art. I-47, §4:** "Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of **inviting** the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of **implementing** the Constitution. European laws shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which such citizens must come."
We are really a thousand miles away from the referendum of popular initiative (as found in Switzerland, USA or Venezuela), which is advertised to the voters.

[39] For the detail of **the setbacks of fundamental rights,** compared to existing law: see **Raoul Marc Jennar** (in French), "*Europe, the elites' betrayal*", starting page 102.
See also the point of view of **Alain Lecourieux**, "*The illusion of fundamental rights in the European Constitution*" (French):\\ http://www.eleves.ens.fr/attac/Lecourieux-droits-fondam.pdf . Seealso the thesis of **Anne-Marie Le Pourhiet**, professor at University Rennes I: "*The values and objectives of the Union*", in the book "the new EU. Critical approaches of the European Constitution".
See also **Jacques Généreux** (in French), in his "*Critical manual of the perfect European*", starting page 113: no advance of social rights.

[40] **Article II-111: Field of application** [of the Charter]:
"1.The provisions of this Charter are addressed to the institutions,bodies,offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.They shall therefore respect the rights,observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the other Parts of the Constitution.
2.This Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union,or modify powers and tasks defined in the other Parts of the Constitution."

Article II-112: Scope and interpretation of rights and principles [of the Charter]:
"1.Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms.Subject to the principle of proportionality,limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2.Rights recognised by this Charter for which provision is made in other Parts of the Constitution **shall be exercised under the conditions and within the limits defined by these relevant Parts**."
This indentation establishes the Charter (that is part II of the Treaty) as a a legal text inferior to all other parts (particularly part III), rather than the opposite, as often claimed.
"3.Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms,the meaning and scope of those rights shall be the same as those laid down by the said Convention.This provision shall not prevent Union law providing more extensive protection.
4.Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States,those rights shall be interpreted in harmony with those traditions.
5.The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions,bodies,offices and agencies of the Union,and by acts of Member States when they are implementing Union law,in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality."

Note to the note: this afternoon, I received a fabulous email from a Spanish guy named Rodrigo, lawyer in Bruxelles, former community Law professor and a dedicated advocate of the treaty. He writes an impeccable French. With absolute respect, which is now close friendship, he writes me that he is enthousiastic about what I am doing, even though he totally disagrees with me. Then he explains in huge details why it is excessive to say that the article 111-2 "sterilizes" the Charter. I read carefully his explanations, I check them against what Paul Alliès says : **it is the interpretation of the Court of Justice that will make, or not, the strength of the Charter**, and this strength is potential, but real... OK, I take the paragraph I had entitled "111-2 sterilizing" out of my text, and I keep only the basic step backwards (rather fewer rights than more). After that, he and I talked for one hour on the phone. This is an example of the very warm exchanges stirred by this debate. We are not obliged to kill each other on the issue. We will survive to the 'yes' or the 'no', we can dream together of another Europe.

[41] The election of a Constituent Assembly to establish a democracy: **each time the UN sets up democracy in a country, it always begins by programming the election of a Constituent Assembly**.
So, the founding model that the UN proposes to all countries throughout the world is this procedure.
So, I am surprised to see that some European jurists accept to abandon it.

[42] About what can be reproached to the Convention led by Valéry Giscard d'Estaing, read the analysis of **Robert Joumard**, starting page 13, see also that of **Christian Darlot**. See also **Paul Alliès**, " A Constitution against democracy?", starting p. 38. See also the **counter-report** of the Conventionals cited above.

[43] Read on this subject the position of **Pervenche Berès**, member of the Convention led by Valéry Giscard d'Estaing, therefore a cowriter of the text, who nonetheless disowns the final result, as it has been so dramatically disfigured by the governments in the year following its draft, and who finally calls to **"Say 'No' to save Europe"** (in French):
http://www.ouisocialiste.net/IMG/pdf/beresMonde290904.pdf.

[44] **Antidemocratic "plague"?** Newspaper 'Le Figaro', 11 april 2005, *Alain Minc* writes: "Valéry Giscard d'Estaing has committed only one mistake: to call the text of the Treaty a "Constitution". This is precisely this word that has precluded ratification by the Parliament. **The referendum is like an anti-democratic "plague",** which France would have propagated to all Europe."
This sentence has been resonating in my head for one week, it takes all its sense, like a **confession** of what the elites think they should have done really: bypass the people.
And that's it: I no longer want that these men fix my fate. I will stop trusting our elites so blindly, and, from now on, I shall take care of my own business.

[45] **Planning of ratifications:**

Countries which do not submit the Treaty to direct approval by their people: Lithuania (11 december 2004), Hungary (20 december 2004), Italy (25 january 2005), Slovenia (1st february 2005), Germany (12 may 2005), Slovaquia (mai 2005), Cyprus (mai 2005), Austria (spring 2005), Belgium (spring 2005), Greece (spring 2005), Malta (july 2005), Sweden (december 2005, and yet 58 % of swedish people did call for a referendum), Estonia (2005), Finland (end 2005), Latvia (undecided).

Countries which have opted for a referendum: Spain (20 february 2005), France (29 may 2005), Netherlands (1st june 2005), Luxemburg (10 july 2005), Denmark (27 september 2005), Portugal (october 2005), Poland (end 2005), United-Kingdom (spring 2006), Czech Republic (june 2006), Ireland (2006).

Three of these referendums are only consultative (Spain, Netherlands and Luxemburg) and, finally, **only six peoples are really consulted** on this project:
Portugal and Ireland (which will probably vote Yes)
And Czech Republic, Poland, United-Kingdom and France (which are going to vote No).

Six country truly consulted on twenty-five...
I find this very telling about how much the governments of Europe care about their peoples' will.

[46] RM Jennar is right: We must restate our fundamental principles, and recall what was proclaimed, on 26 june **1793**, in article 35 of the '*Declaration of the rights of man and the citizen'* of year I: "***When the governement violates the people's rights, the insurrection is for the people and for each part of the people the most sacred of rights and the most indispensable of duties"***.
("Europe, the elites' betrayal... ", p. 218).

[47] According to the famous quotation of ***Lacordaire***: "Between the powerful and the weak, between the rich and the poor, between the master and the servant, it is freedom that oppresses and the Law that sets free".
Each one can foresee what will happen with free foxes in a free henhouse.
The charms of unrestrained freedom are a fable, an imposture.

[48] Read the analyses of the ***Acrimed*** site about the partiality of the medias about this project (in French): http://www.acrimed.org/article1950.html
Read also the article of ***Bernard Cassen*** in *'Le Monde diplomatique'*: "**Rigged debate about the Constitutional Treaty**" (in French):
http://www.monde-diplomatique.fr/2005/02/CASSEN/11908.

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Parmi les livres et articles que j'ai lu depuis six mois, **tous profondément proeuropéens**, certains aident particulièrement à se forger une opinion construite et solidement argumentée sur ce texte complexe, et plus généralement sur la construction européenne et la dérégulation mondiale :

- **Raoul Marc Jennar,** docteur en sciences politiques, chercheur pour le compte de l'ONG OXFAM, **« *Europe, la trahison des élites* »**, 280 pages, décembre 2004, Fayard : pour un réquisitoire rigoureux et passionnant. Une étude consternante des rouages européens et des dérives foncièrement antidémocratiques de cette Europe qui ment tout le temps. **Comment la défense des intérêts privés des grands groupes a d'ores et déjà pris la place de celle de l'intérêt général. Les chapitres sur l'OMC, l'AGCS et l'ADPIC sont absolument é-di-fiants.** Un livre essentiel, à lire d'urgence.
  Tous les journalistes, par exemple, devraient avoir lu ce livre.

- **Laurent Lemasson**, diplômé de l'IEP de Paris, docteur en droit public et sciences politiques, chargé de cours à l'ESSEC, a écrit un article captivant **« Constitution européenne : l'Europe y trouve-t-elle son compte ? »**, 15 déc. 2004 : une lectrice m'a envoyé cette référence il y a quelques jours et je pense que c'est l'analyse la plus finement argumentée, la plus pénétrante qu'il m'ait été donné de lire sur **la question de l'équilibre et du contrôle des pouvoirs.** À lire absolument, ça va vous passionner. C'est sur le site le d'institut Thomas More : http://www.institut-thomas-more.org/showNews/24.

- À 15 jours du scrutin, un jeune homme vient d'écrire un argumentaire, passionnant, serré, convaincant qui s'intitule **« témoignage d'un revenu du oui,** suivi d'un **inventaire d'arguments inédits en faveur du Non** », par **Thibaud de La Hosseraye**. C'est à http://www.ineditspourlenon.com/.

- **« Douze économistes contre le projet de constitution européenne »**, par Gilles Raveaud, docteur en économie et enseignant (Institut d'études européennes, Université Paris VIII, et onze autres : **une analyse remarquable, très argumentée, du projet actuel de l'Union, plus économique que politique**, à lire :
  http://www.legrandsoir.info/article.php3?id_article=2231 et http://econon.free.fr/index.html

- **Paul Alliès, *« Une constitution contre la démocratie ? Portrait d'une Europe dépolitisée »***, 223 pages, mars 2005, Climats : ce professeur de sciences politiques à l'Université de Montpellier I rappelle d'abord les fondements de la démocratie, parmi lesquels un authentique processus constituant, et explique ensuite que le projet de **TCE interdit à l'Europe de devenir une véritable puissance politique**, sonne **le glas d'un gouvernement économique et plus grave encore, d'un fonctionnement démocratique.**

- **Stéphane Marchand, *« L'Europe est mal partie »*,** 361 pages, février 2005, Fayard : ce journaliste au Figaro a un style agréable à lire, il nous raconte l'Europe politique d'une façon vivante, il défend une Europe des cercles. Un livre optimiste malgré son titre, vraiment intéressant.

- ***« La nouvelle Union européenne. Approches critiques de la constitution européenne »***, 182 pages, avril 2005, éd. XF de Guibert. Sous la direction **d'Olivier Gohin et Armel Pécheul**, préface de Jean Foyer, tous professeurs de l'Université : ce petit livre important regroupe les analyses de **neuf jeunes constitutionnalistes universitaires** et argumente de façon rigoureuse sur les vices rédhibitoires du TCE au regard de la démocratie. (rapport du colloque du 12 mars 2005, disponible sur commande, 3 rue JF Gerbillon 75006 PARIS).

- **Anne-Marie Le Pourhiet, professeur de droit public**, a écrit dans *le Monde*, le 11 mars 2005, un article qui résume bien l'essentiel : ***« Qui veut de la post-démocratie ? »*** : un article court (une page) et percutant :
  http://decrypt.politique.free.fr/constitution/lemonde.shtml.

- **Jean-Paul Fitoussi**, économiste distingué, Professeur des Universités à l'Institut d'Études Politiques de Paris, Président du Conseil Scientifique de l'IEP de Paris, Président de l'OFCE et Secrétaire général de l'Association Internationale des Sciences Économiques, propose : ***« La Politique de l'impuissance »***, 160 pages, janvier 2005, Arléa : un passionnant petit livre d'entretiens avec Jean-Claude Guillebaud pour comprendre comment l'Europe abandonne sciemment la démocratie et renonce à l'intervention économique des États. En nous rappelant la chronologie des grandes décisions, on comprend quelle progression insensible nous a conduit là. Fitoussi est d'une rigueur étonnante, un grand personnage de l'analyse économique.

- Raoul Marc Jennar, ***« Quand l'Union Européenne tue l'Europe »***, 40 pages, janvier 2005 : une brochure résumant un argumentaire serré contre le "traité constitutionnel". Également un **DVD** où Jennar présente lui-même, de façon pédagogique, très posée, **trois exposés** sur **l'AGCS**, la directive **Bolkestein** et le **traité** constitutionnel. On y sent très fortement la terrifiante cohérence qui relie ces textes. Documents importants disponibles sur www.urfig.org.

- **Jacques Généreux,** économiste, professeur à Sciences Po, ***« Manuel critique du parfait Européen – Les bonnes raisons de dire "non" à la constitution »***, 165 pages, février 2005, Seuil : encore un excellent petit livre, très clair, vivant, incisif, très argumenté, avec une tonalité à la fois économique et très humaine.
  Encore un enthousiasmant plaidoyer pour une vraie Europe !

- **« Contre rapport – l'Europe des démocraties »**, par un groupe de conventionnels qui ont refusé de signer le projet de **TCE, jugé comme « allant à l'encontre de tous les principes démocratiques »**, pour une série de raisons qui méritent d'être étudiées. Voir **l'annexe III, pages 21 à 24** :
  http://europa.eu.int/constitution/futurum/documents/contrib/doc180703_fr.pdf

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- **Laurent Fabius, *« Une certaine idée de l'Europe »*,** 125 pages, nov. 2004, Plon : un petit livre sans longueurs, agréable à lire, qui résume bien ce qui n'est pas acceptable et qui dédramatise le Non.

- **Yves Salesse,** membre du Conseil d'État, ***« Manifeste pour une autre Europe »***, 120 pages, janvier 2005, Le Félin : un argumentaire précis, rigoureux, constructif. Agréable à lire et très instructif.

- Yves Salesse a également rédigé un article plus court qui résume en 10 pages son analyse : ***« Dire non à la "constitution" européenne pour construire l'Europe »*** : http://www.fondation-copernic.org/Flash-septembre2004.pdf.

- Un document passionnant de **Raoul Marc Jennar**, daté d'avril 2004, intitulé **« Combien de temps encore Pascal Lamy ? »** : on y comprend rapidement ce qu'est en fait « l'indépendance » de la Commission, l'incroyable **perméabilité** des commissaires aux pressions extérieures, on découvre l'imbuvable **ADPIC** (accord sur les droits de propriété intellectuelle) et ses implications en matière de médicaments, on y retrouve le révoltant **AGCS** (accord général sur le commerce des services). Il faut lire cet article important : http://politique.eu.org/archives/2004/04/11.html.

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- **Olivier Duhamel, *« Pour l'Europe, le texte intégral de la Constitution expliqué et commenté »***, Seuil 2004 : une explication de texte de première main, par un grand professeur de droit constitutionnel qui a participé à la Convention et à l'écriture du TCE.

- Ces temps-ci, une source majeure d'information non censurée, très orientée politiquement (à gauche), mais absolument foisonnante, est **le site portail www.rezo.net**. J'y trouve chaque jour au moins un document intéressant.

- **Bernard Maris**, « *Ah Dieu ! Que la guerre économique est jolie* », novembre 1999, Albin Michel : pour une démonstration de l'imposture de "l'indispensable guerre économique", avec un parallèle très convaincant avec la guerre de 1914 : **comme d'habitude, la guerre n'est pas inévitable, et ceux qui poussent à faire la guerre ne sont pas ceux qui se battent et qui souffrent.** Un bel **appel à la désertion**.
  À mettre en parallèle avec la religion de la concurrence (compétition) sans entrave, rabâchée par le "traité constitutionnel" qui, finalement, monte les États et les peuples les uns contre les autres, à coups de dumping social, fiscal, et environnemental.

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- **Agnès Bertrand** et Laurence Kalafatides, **« *OMC, le pouvoir invisible* »**, 325 pages, juillet 2003, Fayard : un livre palpitant et éclairant pour comprendre les objectifs et les moyens de cette énorme machine à déréguler que sont le GATT puis l'OMC, **outils de contrainte pour les États mais jamais pour les entreprises**. Ce livre permet de ressentir fortement la parfaite cohérence qui existe entre les objectifs et les influences de l'OMC et ceux de la construction européenne actuelle.

- **Joseph E. Stiglitz, « La grande désillusion »**, 324 pages, sept. 2003, Fayard : un pavé dans la mare : un grand économiste libéral, patron de la banque mondiale, qui a travaillé avec les plus grands hommes de ce monde, et qui **décrit en détail le dogmatisme aveugle et criminel des technocrates libéraux du FMI et ses conséquences sur les économies et les peuples**. Un style soigné, 0% de matière grasse. Un grand bouquin, une référence. À lire.

- Pour comprendre la logique d'ensemble de ce qui prend forme au niveau planétaire, il faut lire l'article à la fois terrifiant et lumineux de Lori M. Wallach, ***« Le nouveau manifeste du capitalisme mondial »***, dans *Le Monde diplomatique* de février 1998, à propos de *l'Accord Multilatéral sur l'investissement* (AMI), (une de ces *« décisions Dracula »*, appelées ainsi parce qu'elles ne supportent pas la lumière, tellement elles sont évidemment inacceptables) : http://www.monde-diplomatique.fr/1998/02/WALLACH/10055.
  On y perçoit clairement, comme grâce à une caricature, la logique qui sous-tend de nombreux textes et accords essentiels en préparation aujourd'hui : AGCS, Construction européenne libérale, OMC, ADPIC, directive Bolkestein, etc. La parenté de tous ces textes devient évidente : **un redoutable « air de famille ».**

- **Serge Halimi, « Le grand bond en arrière, comment l'ordre libéral s'est imposé au monde »**, 618 pages, mars 2004, Fayard : un gros bouquin qui permet de comprendre comment on en est arrivé là. **On retrouve cette cohérence d'ensemble, et on ne lit plus le TCE de la même façon après avoir lu Jennar et Halimi. On change. On a l'impression de se réveiller.**

- **Robert Joumard et Christian Darlot**, enfin, simples citoyens comme moi apparemment, ont fait la même démarche : ils ont beaucoup lu, digéré, résumé, rassemblé, organisé tout ça avec talent pour faire deux synthèses un peu longues, comme la mienne, mais vraiment très intéressantes.
  Deux documents très bien faits à : http://institut.fsu.fr/chantiers/europe/traite_constit/joumard.pdf et Liens.

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