

ANDREAS MAURER:

The Convention Is More Than Bargaining Over Competencies Reply to Marcus Höreth

In his comment »From Arguing to Bargaining Again«, Marcus Höreth doubts that »the Convention method is really able to transform interest conflicts in a deliberative way.« To support his reasoning, he argues that the Convention is failing to discuss core issues of the EU's future architecture, that it has largely ignored the democratic-deficit problem, and that this ignorance is due to the Convention method and its inability to deal with power-struggles between member states. According to Höreth, there are three reasons for the Convention's handicap:

- a) Debates on the constitutional architecture of the EU are to a large degree zero-sum games – powers given to one institution have to be taken from others. This hinders progress in the deliberative search for a solution which would involve all participants of the Convention.
- b) Unsure about the implications of institutional reforms, the Convention members are as risk-averse as the Member States' representatives at Inter-Governmental Conferences.
- c) Behind the facade of deliberative discourse lies the struggle of conflicting interests. Due to their affiliation to institutions and institutional interests, the »Conventionals« are biased. They do not act as independent arguers but as rent-seeking representatives of their constituent units.

The Convention and the Issue of the EU's Democratic Deficit

Höreth thus criticizes the deliberative approach of the Convention through his own lens of normative expectations. According to him, the Convention does not address the issue which he considers most important. To turn the argument around, the Convention method would be a success if it dealt with and resolved the democratic-deficit problem.

However, the Convention *is* dealing with the EU's democratic deficit. While neither the Nice treaty's declaration on the future of the European Union nor the Laeken European Council's Convention mandate expressly employ the notion of the democratic deficit the post-Nice process directly addresses the issue of democracy, democratic values and the democratization of the EU's institutions and procedures. Declaration

No. 23 on the future of the Union annexed to the Nice Treaty, stated four topics to be made the center of attention at the Convention: (a.) the establishment and monitoring of a more precise delimitation of powers between the European Union and member states, (b.) the status of the Charter of Fundamental Rights of the European Union, (c.) the simplification of the Treaties with a view to making them clearer and better understood, and (d.) the role of national parliaments in the European architecture.

During the »printemps constitutionnel«⁶ of 2000 Joschka Fischer, Jacques Chirac and Tony Blair⁷ refreshed a debate⁸ which started as early as the Maastricht Inter-Governmental Conference, on how to link the European Parliament *and* the national legislatures into a continuous process of compounded problem-solving beyond the nation-state. The Nice declaration's topics mirror this rather disordered set of views on the general theme of »democratization«. But the post-Nice process – including the ongoing Convention – has raised the question what could be understood by democracy in a political system like the European Union and whether the European Union could be democratized by modified institutional and constitutional rules.

Based on the shared understanding that different views and interpretation of »democracy« cannot simply be resolved by another IGC deal, the Convention was established to promote greater empathy between its members with regard to deep-seated differences between national, supranational, parliamentary and governmental approaches to resolving the democratic deficit. In this regard – and even if the Convention did not explicitly create working groups on »democracy« or on »democratizing

6. See: Maurer Andreas/Franck, Christian: »Reforming the institutional set-up of the Union«, in: Maurer, Andreas (ed.): Europe's political priorities report, Brussels 2000, pp. 39–49.

7. See Fischer, Joschka: »Vom Staatenbund zur Föderation – Gedanken über die Finalität der europäischen Integration«, in: Integration, No. 3/2000, pp. 149–156; Chirac, Jacques: »Notre Europe«, Speech before the German Bundestag, 27 June 2000, <http://www.elysee.fr>; Blair, Tony, Speech at the House of Commons, 11 December 2000, <http://www.fc.gov.uk/news/newstext.asp?4489>.

8. See Joerges, Christian/Mény, Yves/Weiler, Joseph (eds.): What Kind of Constitution for What Kind of polity? Responses to Joschka Fischer, Florence 2000; Marhold, Hartmut (ed.): Die neue Europadebatte. Leitbilder für das Europa der Zukunft, Bonn 2001; Schwarze, Jürgen (ed.): The Birth of a European Constitutional Order, Baden-Baden 2001.

the EU's institutional structure« – each of the existing working groups addresses central issues with regard to the democratic nature of the EU's system. Furthermore, instead of directly – and naively – concentrating on the parliamentary side of the democratic deficit, the Convention decided to debate a more open-minded reform with regard to the reconciliation of the obvious need to enhance the EU's problem-solving capacity on the one hand and the requirement to democratize the resulting opportunity structures for its institutions on the other.

Citizens do not vote on the ground of highly aggregated institutional settings. They are interested in outcomes and in arguments, legal powers, and policy programs which reflect their wishes, interests, worries and concerns. In this regard, the Convention's working groups on the Charter, Complementary Competencies, Economic Governance, the EU's External Action and Defense, Freedom, Security and Justice, and on Social Europe have largely focused on the EU's output legitimacy and thus reflect the continuous search for problem-solving capacities in specific policy areas without explicitly considering appropriate governance structures. Furthermore, in contrast to negotiations on similar subjects at the IGC level, the recommendations of the working groups have been drafted on the basis of a large consensus of its members.

The Convention as a Deliberative Process

However, the development of the European Union is characterized not only by an increasing and dynamic quest for effective policy production, but also by an ongoing search for efficient, transparent and democratic »frames« which make sure that policy outcomes are perceived and accepted as legitimate. To successfully reconcile the management of growing responsibilities with the demands for participation, the existing institutional framework of the Union will be altered. This is precisely the task of institutional reform. Unlike Höreth, I would claim that the Convention has extensively considered these issues. Already prior to the Franco-German initiative on institutional reform, the Convention's plenary and working groups have dealt with the role of national parliaments, the future powers and functions of the European Parliament, the extension of the scope of the co-decision procedure, the extension of the scope of qualified majority voting, and future means to hold the EU's executive branches more accountable.

As regards the applicability of the theory on deliberative democracy and the method used in the Convention, I thus come to the following observations:

1. The theory assumes that the participants in the Convention are free, they are only bound by the results of the deliberation. One can identify three groups of actors: (1) a minority who still try to act as representatives of the »national interest«, i.e. some (not all) of the representatives of the heads of states and governments; (2) a minority of national parliamentarians who act on their own behalf without considering the positions of their home bases; and (3) a large majority of members who try to cope with different layers of their identity as MPS/MEPs, government officials, and so on, and who change their positions several times according to an ongoing and open debate on the EU's future design.
2. The theory assumes that deliberation is reasoned – no force is exercised, except that of the better argument. And in fact, the Convention does not feature any means of coercion or majority decisions. Instead, the debate within both the working groups and the Convention plenary remains open-minded and egalitarian. Representatives of larger member states or government officials do not tend to argue on the basis of their potential bargaining power.

The style of the Convention's debate still remains *arguing* between individuals – not representatives of legal bodies and interest groups – who try to develop empathy for each other's arguments and problems.