

Christine Kaddous and Andreas Auer (Eds.), *Les principes fondamentaux de la Constitution européenne*. Basel: Helbing & Lichtenhahn, 2006. 372 pages. ISBN 3-7190-2469-5. CHF 98./ EUR 62.

After the French *non* and the Dutch *nee*, the Treaty establishing a Constitution for Europe faces several possible futures. Irrelevance and oblivion are among the least probable. Thym aptly observed on the pages of this Review (2007, p. 206) that “a lasting legacy of the debate on the European Constitution is a better understanding of the theoretical basis for European integration” and, one may add, a better understanding of the EU’s founding institutional principles. Moreover, the text solemnly approved on 29 October 2004 still has great chances of coming into force – either as it stands, or in a modified form, or at the very least in bits and pieces through Treaty amendments and secondary legislation (see this Review, 2006, 1243 et seq.). Therefore, even after May and June 2005, the thriving literature on the Treaty cannot be regarded as a *souvenir* of a past constitutional spring. It is a living part of the debate on the integration process, and its interest – far from being diminished by its object – only depends on its quality.

The book under review collects the presentations made by leading scholars, EU high-ranking officials, judges from the ECJ and CFI, and eminent political personalities at a conference held in Geneva in March 2005. It includes six thematic sections, preceded and followed by a general introduction and conclusion, as well as two contributions offering a “political perspective” on the Constitution. The introduction, written by Amato, is a brilliant essay on the mixture of continuity (“path dependence”) and innovation which characterizes the Constitution. It is followed by the first thematic section (“The Birth of a Constitution”), which comprises four contributions. The section is opened by Louis’ “*Du projet Spinelli à la Constitution européenne*”, a masterful review of the dilemmas involved in the process of “constitutionalizing” the existing Treaties and of the solutions embodied in the 1984 Spinelli project and in the Constitutional Treaty. Petite and Jacqué then give a two-tiered account of the elaboration of the Constitutional Treaty. The works of the Convention are examined in Petite’s brief and schematic “conference notes”, while Jacqué’s essay gives an insightful account of the Intergovernmental Conference. Christianos’ contribution on the ratification of the Constitution focuses on the “*crise constitutionnelle annoncée*” (later, *réalisée*) and on the possible ways out – a subject also addressed more briefly, and perhaps more poignantly, in Louis’ contribution.

The second section (“Constitution or Treaty?”) comprises three contributions, which fortunately do not insist too much upon the assigned theme. In the first one, Eijsbouts describes in broad strokes the European Union’s model of polity – dubbing it an “amphibious model”, as it mingles international and constitutional elements. The contribution deals only briefly with the “Constitution or Treaty” issue. The second contribution, by Moreiro Gonzales, examines the legal nature of the Constitutional Treaty more closely. The author contends that in formal terms, the Constitution falls in the category of international treaties and the EU in that of international organization – while admitting however that it could be, at best, a partial conclusion. The focus of Gonzales’ contribution is, however, elsewhere – on various issues of consistency (or otherwise) of the Constitution with the international legal order. The section is closed by the brief and elegant contribution by Aubert (“*Qu’est-ce qu’une constitution?*”). One of its merits, and not the least, is to demonstrate conclusively that as such, the question “Constitution or Treaty?” can scarcely receive a clear-cut answer in legal terms, and is at any rate of little legal significance.

The book’s third section (“Sovereignty”) consists of three contributions. The first one, by Craig, is a stimulating, if not wholly convincing discussion of the principle of supremacy in the Constitutional Treaty (Art. I-6), both in its positive and normative dimensions. The second contribution, by Vadapalas, is a descriptive essay on the delimitation of competences between the EU and the Member States according to the European Constitution. It raises some interesting points, e.g. as regards the continuing legal personality of the Member States or the *Kompetenz-Kompetenz* issue, but a coherent and synthetic conclusions on the matter is lacking. The third contribution, by De Witte, is a brilliantly conducted analysis of the three revision clauses contained in Part IV of the European Constitution, with a particular focus on the (only slightly) “simplified” procedures provided for in Articles IV-444 and 445.

“The Large, Medium and Small Sized States” is the title of the next section. It starts with a good contribution by Rideau, which sets out in clear and concise form the terms of the “interstate balance in the EU” issue and describes the solutions embodied in the EEC Treaty, in its subsequent amendments and finally in the European Constitution. The second contribution, by Grabowska, is titled “The Medium Sized States”. In its rather untidy development, this contribution lumps together a number of miscellaneous items (press shortcuts, opinion polls, mathematical studies on voting rules in Council, observations on the length of the Constitutional Treaty and on the number of its official languages) leaving the reader without a clear understanding of the medium-sized Member States’ position in the EU. Indeed, the author fails to provide even a convincing definition of “Medium Size Member States”. No contribution being devoted to the position of Large Member States, the section ends with

Griller's contribution, titled "The Perspective of Small Countries on the Treaty establishing a Constitution for Europe". This contribution focuses mostly on classical institutional aspects (voting and presidencies in Council, Commission and EP composition), but it also analyses some developments of free movements law under the angle of the protection of small States' identity and equal rights, with interesting results.

The fifth thematic section ("Equality") contains two contributions. First, Zemanek gives a short summary of the ECJ's case law and the Constitution's provisions on equality. The second is a contribution by Lenaerts and Van Nuffel entitled "Advanced Integration and the Principle of Equality of Member States within the European Union". In this contribution the principle of equality is not examined in depth, and it could have been omitted from the title. This, obviously, does not detract from the quality of the contribution, which is an excellent discussion on differential integration and raises interesting points, especially on the substantive requirements of enhanced cooperation.

The last thematic section of the book is "Democracy". It comprises four contributions, none of which offers a thorough discussion of democracy in the EU. The first contribution, by Czuczai ("Citizenship of the Enlarging European Union in the Light of the New Constitution") has two main objects: first, it advances the notion that the Constitution recognizes both an "EU Citizenship" and (implicitly) a wider "Europe's citizenship", i.e. a set of citizenship rights accruing to European third-country nationals; secondly, it examines the provisions of the Constitution on EU citizenship. Unfortunately, in the reviewer's opinion, the demonstration supporting the concept of "Europe's citizenship" is unconvincing, and the analysis of the Constitution's provisions is not particularly effective. The following two contributions, by Pernice and Kaddous, deal with direct democracy in the EU. Pernice's contribution on the feasibility and desirability of a European referendum on the Constitutions is very well written – and it acquires a new, unexpected perspective in the present constitutional *impasse*. Kaddous' essay, which examines the Constitution's provisions on the popular initiative (I-47(3)), provides the reader with a synthetic, accessible and effective analysis of the issue.

The three remaining contributions are the general conclusions written by Auer, the transcript of a speech delivered at the conference by Swiss Minister for Foreign Affairs Calmy-Rey – of some interest to those who are not acquainted with the peculiar relationship between Switzerland and the EU – and a postface written by Badinter in the aftermath of the French and Dutch referenda, which can be aptly epitomized by its last sentence ("La Constitution est morte – Vive le Traité!").

Commenting on the book as a whole, the reviewer feels obliged to clarify two basic misunderstandings that could derive from a first glance at its cover. Firstly, the title *Les principes fondamentaux de la Constitution européenne* could be taken to mean that the book is wholly written in French. It is not: near half of its pages are in English. Secondly, and more importantly, the title might suggest that the book gives a synthetic and structured account of the core principles of the European Constitution – an impression that the titles of the thematic sections could reinforce. It does not, and was probably not meant to. In particular, the sections' titles have clearly been taken to be merely indicative by the contributors and by the editors, and as said the book contains no thorough discussion on sovereignty, equality or democracy in the Constitution or in the EU. Instead, *Les principes fondamentaux de la Constitution européenne* is a collection of essays of heterogeneous quality addressing various aspects of the Constitution. Some are extremely short, others are long and structured; some are very descriptive, others are more thought-provoking; some are skilfully written, others would greatly benefit from more editing. And, most importantly, some are of limited interest, while others represent a long-lasting contribution to the understanding of the Constitution and of European integration.

Francesco Maiani
Lausanne