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From Deliberation to Bargaining Again – the Limits of the Convention Method

Introduction

The problem we should address here is if the Convention is ignoring the public in the way it tackles the democratic deficit. Without hesitation I would say yes. My personal impression is that the Convention indeed ignored – until recently – the democratic deficit, although this issue signifies one of the most urgent concerns of the public. Instead we had subsidiarity, simplification of the treaties, legal personality of the Union, economic governance and other issues on the Convention's agenda. The only exception is the proposal of the so-called "early warning system" through which national parliaments should be enabled to control more effectively the EU decision-making process. But no one in the Convention seriously reflected if these improvements for national parliaments will provide new ground for enhancing the legitimacy of European governance towards the citizens of the Union. To conclude, besides the relatively non-controversial objective to enforce national parliaments in the multilevel game of European policymaking, the Convention didn't address the real problem of how to democratise the European governance system. Of course I can't stop my lecture at this point. The very interesting question remains, then, *why* this is the case? *Why* this ignorance? My intuitive answer is that it has something to do with the new Convention method, the way it works as a deliberative consensus-seeking forum. And this method has its limits exactly where the power struggle begins. And it has begun.

In order to demonstrate my argument, I will first introduce the secrets of the underlying deliberative theory of the Convention method praised by so many academics. In a second step I try to show that sometimes reality is so unfair that our nice theories do not work empirically. That means I will highlight the limits of deliberation in the Convention and the reasons for these limitations. Moreover, it will become clear that these limitations prevent that the Convention deals with the democratic deficit more comprehensively and courageously. In a last step I will make a plea for a return to realism because in my view it is better not to ignore the facts.

The Convention as a model for deliberative democracy?

Let's turn to our first question: What is the secret of the Convention method? Why do so many observers already claim it is a success, moreover, it is a nucleus for a true deliberative democracy? What are the premises of the concept, what are its principles?

- The basic principles of a deliberative democracy are discussion, persuasion and compromise.
- Ideally, no one unilaterally pushes his own preferences at the cost of the others.
- The debate is fair: every participant is free, has an equal voice and standing and is, vice versa, prepared to hear all the arguments of the other participants. Arguing is the dominating modus operandi instead of interest-driven bargaining.
- Consequently, the deliberation procedure is reasoned, no force is exercised except that of the better argument.

What a wonderful world! The result of deliberative procedures is that the tensions between interests can be reduced. Under these circumstances a rational, motivated consensus can be found as a result of a free and reasoned assessment of alternatives by equals. In the end, interest conflicts can be transformed into a deliberative search for the best solution which is the guaranteed outcome if all procedural requirements described above are fulfilled. In a deliberative setting participants are more likely to reach optimal solutions, because they share not only information freely but also a common frame of reference, while lowest common denominator outcomes are more likely in negotiations in which strategic rationality and bargaining dominate. The IGC in Nice serves as an example for the latter.

What does this have to do with the Convention? Theorists of deliberative democracy believe that the Convention strengthens the legitimacy of the European political system because it simply is very different from IGCs. And, therefore, it comes closer to the ideal of deliberation: it features a much wider range of actors who are all, in principle, free and have an equal voice during the deliberations. The openness of the Convention supports the necessity for the Convention members to persuade with the quality of their arguments. In contrast, typical characteristics of interest-driven bargaining processes such as pork barrelling, log-rolling are omitted because they are not well communicable for the European public. Last but not least, no one is able to push unilaterally his own preferences at the cost of the others without threatening the success of the whole Convention. As no one wants to be responsible for a total failure, no one is playing a real power game by flexing his political muscles.

Limits of Deliberation in the Convention

So far the theory. Does the Convention really act in this wonderful world called deliberative democracy? And back to our question at the beginning: Why do the alleged deliberative nature of the Convention and its limits have something to do with the fact that the Convention is ignoring the public regarding the democratic deficit, its unwillingness to tackle this key problem of European governance? The answer is that the deliberative Convention method is not well-suited to address such tricky and contested questions. We can observe a real dilemma. On the one hand, the public and many observers expect that the Convention is addressing the democratic deficit problem directly and comprehensively; on the other hand, unfortunately, this very approach would be tantamount to stepping into a minefield – and the success story of the beautiful Convention method would come to an abrupt end. This is so for three reasons:

Firstly, if you want to address the democratic deficit problem effectively, you need a comprehensive institutional reform to change the nature of European governance. But the nature of the Euro-Polity is highly contested and so is the question of what institutional reforms are required. I am sure that more constitutional blueprints which offer more or less convincing solutions to the democratic deficit problem exist than we have members in the Convention. There is no obvious best solution to offer: there is no Pareto-optimal solution like, say, the Single Market Program which was such a success story for everyone who participated. Debates on the constitutional architecture are to a very high degree zero-sum games – powers given to one institution have to be taken from others. You cannot maximize the powers of every institution, if you want to prevent an institutionalisation of permanent stalemates in the decision-making process or a lack of coherence in the political system as a whole. To put it simply: Every comprehensive institutional reform would produce losers and winners, but no one wants to be the loser in the end. Theoretically, a comprehensive reform through which everyone is a winner at the end is only wishful thinking. Such a “one size fits all” reform would entail that every institutional actor and member state had been able to maximise his own institutional interests, and the found solution is also in the best common interest – an unrealistic expectation, particularly when dealing with a multitude of diverse interests. This principal difficulty hinders progress in the deliberative search for a solution which pleases everyone.

Secondly, different solutions to the democratic deficit problem have different massive and very complex implications for the whole institutional set-up and for the individual institutions. It is not only the fact that the inherent tensions of the institutional framework of the Union prevent a clear positive-sum solution of the democratic deficit problem. It is also a sad truth that constitutional engineers never know exactly what kind of implications certain institutional reforms will have. Therefore, whenever such big issues are to be discussed, the behaviour of the Convention members is as risk-averse as the behaviour of Member States governments in IGCs.

Thirdly, most important, and following from the earlier points I made, everyone in the Convention has certain institutional and institutionalised interests. Behind the facade of deliberative discourse lies the true struggle of conflicting interests. The Convention members are not independent wise men with no political interests. As representatives of certain institutions and institutional interests – and not to forget: states – they are biased, prejudiced. In the minefield of institutional reform, the different delegations of the Convention do not have very much in common as they represent different institutional interests. In rational choice terms, the only thing they have in common is that they are rent-seeking in so far that they are planning to continue their career – as Commissioner, Parliamentarian, as Minister and so on. Therefore, given the incentive structures which dominate in these debates on the institutional architecture, they are not and cannot be characterised by a deliberative arguing modus. Debates are rather characterised by an interest-driven bargaining style by everyone who takes part (and has something to win or to lose).

Conclusions

Against this background, my answer to the question why the Convention ignores the public by not tackling the democratic deficit problem, is easy to find. This disregard becomes understandable, when one realises that the Convention is not well-suited for the task, whenever real constitutional choices have to be made. The Convention method prevents the inclusion of highly controversial issues and, actually, no one has an interest to change this non-controversial modus. Previously, there were no endogenous reasons to change that style of deliberation. It was, under such circumstances, much better to give the public the impression that fair deliberation is the rule of the game. Whoever openly claimed to play by different rules could be blamed for destroying the deliberative paradise. But the factors which change the rules of the game could also be of exogenous origin, for example when the French and German government made a proposal on Dual Presidency – we discussed that already this morning. Mr. Wuermeling, German Member of the Convention, told me that now the time of polite but meaningless phrases is over in the Convention. He is right. But I fear that given the fact that controversial issues now *have* to be discussed because they were put on the table and hard constitutional choices *have* to be made, deliberations in the Convention will soon be replaced by a different modus of negotiations: the consensus-seeking "deliberative" Convention method will dramatically change from arguing to bargaining again. And also given the fact that deliberations have their limits exactly where the power struggle begins, the Convention's debates will differ slightly, if at all from the very nature of debates in Intergovernmental Conferences. Perhaps this is sad, but comes closer to reality. It would be a good thing to accept this fact rather than ignore it. The Convention members – and we academics – should never forget: Even worse than ignoring the public is ignoring the facts.