

French Constitutional History, Garden or Graveyard?

Some Thoughts on Occasion of *Les Grands Discours Parlementaires*

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Le vaisseau constitutionnel n'a point été construit pour rester toujours dans le chantier, mais fallait-il le lancer à la mer au fort de la tempête, et sous l'influence des vents contraires?

Robespierre, 25 December 1793

GARDEN OR GRAVEYARD

On 29 May 2005 the French said no to the draft of a European Constitution. And frankly, the French should know about constitutions! One can differ whether the history of France should be considered a fruitful garden of constitutional thought, a graveyard of constitutional experiments, a 'musée des constitutions', or a minefield; in any case it is beyond doubt that the French are rather experienced in constitutions and constitutional changes. Since the French Revolution in 1789, France has been a monarchy, a republic more than once, an empire twice and a constitutional monarchy in between; the nineteenth century shows the pattern monarchy, republic, empire; since 1958 the French live in their Fifth Republic.

There is a lot to learn from the constitutional history (perhaps struggle is a better word in this context) of this important European country for any political entity in search of a proper constitution. Which constitutional institutions were a success, which were not; why did it or did it not work out the way it was planned? What is the power of a written constitution when the state is ruled by ambitious men; how is it possible that one charismatic man can save or change a whole constitution; under what circumstances can this happen and who were his opponents?

Most of the changes of régime also resulted in a new written constitution. Thanks to the work of the international research project 'The Rise of Modern Constitutionalism, 1776–1849', led by Professor Horst Dippel (University of

Kassel, Germany) many of the late-eighteenth and early-nineteenth century (French) constitutions are easy to consult via internet;¹ a great help for historical and / or comparative constitutional studies.

Those among us for whom the words of the constitutional texts of France themselves are not enough, can turn to the series *Les grands discours parlementaires*.² Since it is sometimes said that men stick to their chairs more easily than to their ideas, it may be worth the effort to get to know these men a little better by studying the way they acted in their parliaments and by listening to what they had to say about the problems they were confronted with and about their constitution. How did they act in the moments at which preservation or change of the constitution lay in their hands (albeit not exclusively)? How passionate were they, how did they argue, on what did they fall back?

Back to our question, constitutional garden or graveyard? It seems that too many, and too ambitious men in late-eighteenth and nineteenth century France had too many far reaching social, economical and political ideas. Each and all seemed to know what was best to safeguard the liberty of the people or of the nation. In harsh times this can easily lead to the conclusion that the opponents are the enemies of the liberty one stands for. The speeches of these men are full of ideas on sovereignty, on power, on rights; some point (with Montesquieu) to the necessity of separation of powers, others (with Rousseau) to its theoretical impossibility. Some look to Rome for an ancient republican example, some to America for a more contemporary one. Others underline the singularity of France and its historically grown institutions. It seems that it was simply too much and, at least for some of the ideas, probably too early. The Revolution of 1789 set something in motion that nobody could effectively control; the French nation was like a driver of a motorbike who has lost control over the handlebars at high speed, helplessly zigzagging along the street, left-right-left-right – until he drops.

This is not only an afterthought. Honoré comte de Mirabeau seems to have had the same in mind in his speech dated 18 September 1789 when he urges the *Assemblée* to argue peacefully (if not brotherly), and not to challenge the power of the truth and of reason; Mars is the tyrant, he says, but law is the sovereign of the world. And in his speech dated 15 July 1791 on the inviolability of the King, Antoine Pierre Barnave also warns his listeners that a good government should enclose the principles of its own stability, if it is to bring well-being; if not, a chain of changes is to be expected. He thought only the monarch, King Louis XVI, could provide enough stability for France in those days – an idea common in the years of Restoration. But the Barnave's King was guillotined on 21 January 1793

¹ See <www.modern-constitutions.de>.

² *Les grands discours parlementaires* [Collection d'Histoire parlementaire], Paris: Armand Colin 2004 (- ...). Unless indicated otherwise, the quotations here are from these series.

and Barnave himself on 29 November the same year. Robespierre in his speech *Le gouvernement révolutionnaire*, dated 25 December 1793, argues against uniform and strict rules for the government, because the circumstances are stormy and changing, and time and again new resources will be needed to be able to deal with new and pressing dangers. Many more examples can be added, but I think this will suffice.

Zigzagging along the road of history; but France did not fall, or did it?

The following volumes of *Les grands discours parlementaires* have been published: *Révolution, De Mirabeau à Robespierre* (texts presented by Guy Chaissinaud-Nogaret); *XIXe siècle, De Benjamin Constant à Adolphe Thiers* (Éric Anceau); *Troisième République, De Victor Hugo à Clemenceau* and *De Clemenceau à Léon Blum* (Jean Garrigues); and *IVe République, de Pierre Mendès France à Charles de Gaulle* (Sabine Jansen). The first two volumes cover the period of the research project mentioned above. They also cover the period in which the constitutional changes succeeded each other rapidly. I will confine myself to the first two volumes, and leave the Third, Fourth (and the Fifth) Republic to others.

REVOLUTION

The first volume (*Révolution*) is stacked with texts of men who shaped history, and the echoes of those words can still be heard in our days: le comte de Mirabeau (1749-1791), Maximilien Robespierre (1758-1794, guillotined), le marquis de Condorcet (1743-1794, died in prison), Georges Jacques Danton (1759-1794, executed), and many more. We hear the famous words of the first, answering to the King Louis XVI on 23 June 1789 that the third estate, *le Tiers état*, will only leave its place in the *Assemblée* when forced by bayonets.³ We hear the *Assemblée nationale* discuss on 16 July 1789 the issue of responsibility of ministers, on the occasion of the dismissal of the popular minister Jacques Necker on 11 July, and the event that it provoked three days later, the storming of the Bastille. Mirabeau fulminates against the theory of separation of the three powers (which is, he thinks, to take words for facts and formulas for reasoning), in favour of the sovereignty of the people. We hear liberal nobles plead for the abolition of feudal rights during the night of 4 August 1789, an appeal to sacrifice their rights to justice, and we hear Barnave plead for inviolability of the King, who had fled Paris some three weeks before, and who had been arrested in Varennes some days later. A year and a half later, on 27 December 1792 Louis de Saint-Just (1767-1794, guillotined together with Robespierre) asks his audience what kind of prince it was whose honesty had to be proved to men; and this man should be inviolable! Anyhow, the

³ '(...) car nous ne quitterons nos places que par la puissance des baïonnettes'.

King turned out not to be inviolable – and Europe trembled. It is history that gives the words of these men their fascinating sound.

Two speeches on participation of the Have-nots in the government may illustrate that France after the Revolution evolved probably too fast and uncontrollably. The first is by Robespierre, two years before the eleven months of Terror, *la Terreur*; the other is by Boissy d'Anglas, about a year after the execution of Robespierre. The speech of Robespierre, in defense of universal suffrage, is dated 11 August 1791, when the Assemblée was about to put the finishing touch to the Constitution of September that year. We hear a revolutionary and democratic voice. The work of the Revolution has to be carried on, he says, and the spirit of the *Déclaration des droits de l'homme et du citoyen* should not only be found in the first part of the new Constitution, saying that the law is the expression of the *volonté générale* and that every citizen has the right to participate in its formation.⁴ What good would it bring to the poor, Robespierre asks his audience, if the armorial bearings of the nobility have vanished, but if the poor cannot vote their representatives, and it is gold that draws a new distinction? Of course, he continues in reply to his opponents, some guarantee of independence of the representatives of the nation and of purity of their intentions is needed to secure good government. But should we indeed look for independence and purity in the fortunes of men? Is it true that honesty and talents are to be measured by wealth? Genuine independence, says Robespierre, is not related to fortune, but to men's needs and passions. Each man, each French citizen is sufficiently apt to receive from his fellow-citizens all the possible tokens of confidence, both as man and as citizen. It would be against the *ordre social* that those who are in need of the protection of the law most, those who are weakest, have the least to say on the laws; it would be unjust that the rich and powerful can influence the laws more than those who need them most. He concludes that moral principles, and consequently the politics of French legislators (*la politique des législatures de la France*) demand that both the conditions to vote and those to be elected should be removed from the Constitution.

Four years later, the political climate had changed after the Reign of Terror. It was now time to avoid tyranny on the one hand and anarchy on the other. Order and tranquility are more important now than equality. François de Boissy d'Anglas (1756-1828) was one of the men behind the Constitution of the Year III (August 1795), which replaced the very democratic, but never actually operative Constitution of June 1793. The time has come to guard against the principles of absolute democracy and unlimited equality, he says. He next draws a distinction between civil equality and absolute equality. Civil equality is what every reasonable man

⁴ 'La Loi est l'expression de la volonté générale. Tous les Citoyens ont droit de concourir personnellement, ou par leur Représentants, à sa formation' (Art. 6).

can claim, the right of a citizen to be part of the social body. The poverty of the indigent is to be protected by the same right as the opulence of the rich! But absolute equality, so he says, is a chimera; it would demand equality of spirit, virtue, physical strength, education and fortune. France needs to be governed by the best men, *les meilleurs*, and these are to be found among the Haves, who are attached to the country in which their property is situated, to the laws by which it is protected, and to the tranquility by which it is conserved – men who have been able to get educated. A country governed by the Haves, *propriétaires*, is a civilized order, *dans l'ordre social*, whereas a country governed by the Have-nots, *non-propriétaires*, is in the state of nature, *dans l'état de nature*. The Have-nots are barely interested in the system that conserves nothing for them, and are always willing to follow any movement that gives them some hope. Therefore, the Constitution should lay down conditions to the magistrates, the administrators of the whole construction. The Have-nots should not be qualified to be appointed in the State service, and the right to vote should be conferred on taxpayers only.

CONSTITUTIONS AND REVOLUTIONS

The first text in the second volume (*XIXe siècle*) is by Benjamin Constant (1767-1830), later known for his 'l'Acte additionnel aux Constitutions de l'Empire' (1815), and even more so for his theory on the King as a 'pouvoir neutre'. His speech was held in the *Tribunat*, on 15 Nivôse of the Year VIII (5 January 1800). The period is known as the Consulate (1799-1804), and France lives under the Constitution of 1799. At the top of the government are the three Consuls, of whom the first Consul, Napoleon Bonaparte, is actually pulling the strings. Legislation is divided, or rather: scattered over no less than four bodies: the *Conseil d'État*, to make the bills under the guidance of the consuls (*sous la direction des consuls*, Article 52); the *Tribunat*, to discuss the bills and give his opinion to the *Corps législatif*; the *Corps législatif*, to vote (in secret) in favour or against the bills, after hearing the government and the *Tribunat*, but without discussing the drafts; and the *Sénat*, to judge on the constitutionality of the law. Only the government has the right of initiative and the only body representing the nation to discuss the bills is the *Tribunat*, of which the members – not very democratically – were appointed by the *Sénat*, and taken from *la liste nationale*. After deliberation, the *Tribunat* appoints three *orateurs* to report and explain the *Tribunat's* view to the *Corps législatif*, either with or against the *orateurs* of the Government.

To restrain too profound deliberation among the members of the *Tribunat*, the government proposed to open the possibility of sending a bill directly to the *Corps législatif* and at the same time to set the date on which this bill should be put to the vote in the *Corps législatif*. This would of course also limit the period for the

Tribunat to discuss the bill. The proposal was presented as a means to speed up the process of lawmaking in cases of urgency; however, it is also an example of changing a country's constitution without amending its Constitution. To set a very short period would make a real discussion concerning the content of the bill in the *Tribunat* impossible and would indeed seriously weaken the position of its *orateurs* in the *Corps législatif* compared to those of the government. A man like Benjamin Constant immediately grasps the consequences of the law as proposed, and the abuse the Government could make of it. He knows Europe is watching and appeals to his fellow members in the *Tribunat* not to let their institution degenerate into the laughing stock of Europe.

To begin with, he claims the freedom to discuss the possible abuse of the law, without being suspected of mistrust against the government. He refers to the idea of a Constitution as such, which aims to set limits to the government and thus can itself be seen as a sign of distrust (*un acte de défiance*). A Constitution would be useless if one supposes the government to be gifted with infallible wisdom and eternal moderation. Now each section of this Government's bill, says Constant, bears witness of a profound suspicion against the *Tribunat*, a disbelief of its integrity. The *Tribunat* is being depicted as a body of opposition, of delay and obstruction. Constant on the other hand draws the picture of the *Tribunat* as being in fact the one and only body for national discussion, *discussion nationale*, obliged to the nation to guard against disastrous laws, of which recent history, he says, has shown too many examples. Why, Constant asks his audience, are those men who have the exclusive right to speak out in this republic, being restricted by such bizarre measures? He concludes that the contest between the *orateurs* of the government and those of the *Tribunat* would become so unequal as to come into conflict with the Constitution's spirit. He therefore suggests treating the government's proposal not as a bill, but as an unconstitutional act of government, and thus to be judged by the *Sénat*.

Constant's elucidation is a quest for open discussion and independence of the *Tribunat*, without which there would be no harmony in the country's politics, and in fact not even a Constitution, but only servitude and silence. And this silence, he continues, shall be heard all over Europe. A defective way of communication is not a road to harmony, but to everlasting discord.

During the next four years of the *Consulat*, Napoleon Bonaparte actually succeeded in silencing the legislative bodies, and – after the *Corps législatif* had followed the unfavourable judgment of the *Tribunat* concerning the first title of the *Code civil* in 1802 – in removing the opposition from these bodies. Benjamin Constant was one of them. Liberty is not only in need of a Constitution, it also needs the courage, and the power to defend it when needed!

The second discourse in this volume is from Lazare Carnot (1753-1823) in the meeting of the Tribunat on 13 Floréal XII (3 May 1804), only a few days before Napoleon was proclaimed Emperor of the French (18 May 1804). France lives under the *Constitution de l'an X*, in which the Consuls, Bonaparte being the first Consul, in Article 39 were already proclaimed Consul for life. Carnot was a former minister of war, who because of discontent with the course the *Consulat* had taken, preferred to oppose the government from the *Tribunat*. In 1802 he had voted against the *consulat* for life; he knew Bonaparte would go further. However, during the invasion of Russia, and later during the Hundred Days he again offered his services to Napoleon. After 1815 he had to live in exile.

At stake in the discourse is the proposal that Bonaparte, *Premier consul de la République*, should be proclaimed emperor of the French and that the imperial dignity should be declared hereditary in his family. Many *tribuns* had already supported the proposal, when Carnot raised his revolutionary voice. It is less difficult, he says, to form a republic without anarchy, then a monarchy without despotism! For his argument he turns to Roman history, which has shown that the durability of a republic is not necessarily more limited than that of a monarchy. The history of the Roman republic also shows that there is an efficient remedy to preserve liberty in times of uprising: temporary dictatorship, i.e., absolute power for a short period to restore peace and order. Bonaparte was well fit to perform that task in France. On the other hand, Carnot continues, in monarchies the only invention to temper the supreme power has been the installation of intermediary or privileged bodies *corps intermédiaires ou privilégiés*. However, these bodies, says Carnot, not only threaten liberty (as does the monarch himself), but equality as well, so that the cure might be worse than the disease. For even if the dignities might initially be attached to a person of outstanding qualities, we know that they will end up as the great fiefs in former times, by becoming hereditary.

In the view of Carnot, the democratic failures in France since the outbreak of the Revolution are due to the fact that all republican constitutions have been achieved in times of tempest, and are the result of factions. He points at America to show the possibility of a calmly organised philosophical framework: a wise and powerful republic with a great future. But in 1804 the historical route of France, and of Europe, was far from calm.

After the final defeat of Napoleon in 1815, France became a monarchy again, and the monarch Louis XVIII granted France a constitution, *la Charte octroyée*, by voluntarily making use of his royal authority at liberty.⁵ This Charter was in force

⁵ 'Nous avons volontairement, et par le libre exercice de notre autorité royale, accordé et accordions, fait concession et octroi à nos sujets, tant pour nous que pour nos successeurs, et à toujours, de la Charte constitutionnelle ...'

until the July Revolution of 1830, when Charles X of the House of Bourbons was overthrown and Louis Philippe, the Duc d'Orléans, ascended the throne. It is shortly before this July Revolution, on 15 March 1830, that Félix de Conny (1786-1850) outlines the political climate of his times in the *Chambre des députés*. There are two doctrines, he says, that divide the world: on the one hand those who consecrate the principle of legitimacy and the succession of power, on the other hand those who raise the dogma of the sovereignty of the people. The Revolution of 1789 proclaimed solely the dogma of popular sovereignty, and the murder of Louis XVI was its consecration. But the Revolution also killed the liberties of the French, because the only possible source of liberties could be a charter based on (royal) authority. De Conny accepts the label *contre-révolutionnaire* that his opponents had given to him, since, he says, France itself is *contre-révolutionnaire*, as it wishes for order, peace, and liberties. Again, order and liberties play their pivotal role in the argument.

But then the question remains: whose order and which liberties? A Constitution itself is of course unable to settle this question sufficiently. Should it be the liberty of François Guizot (1787-1874)? He raises his voice in the *Chambre des députés* on 29 December 1830. He had been minister of interior affairs shortly before under Charles X, and shortly after became minister of public instruction under Louis Philippe; later he became minister of foreign affairs. In 1847 he was appointed Prime Minister, but he had to resign in February 1848, after which he fled to London. In this speech he raises his voice against the legitimate and hereditary power as depicted by Félix de Conny, against what he calls any power anterior, superior and exterior to the Constitution, a constituent, sovereign and absolute power. It was against this extra-constitutional, extra-legal power, expressed in the word 'octroyé' in the preamble, and to be found in section 14 of the *Charte octroyée* of 1814, granting the King the power to make the *réglements et ordonnances* needed for the State's safety,⁶ and the cause of 15 years of unrest and unease in France, that France revolted in July 1830, says Guizot.

But France is cheated, he continues, for the same sort of extra-constitutional power is re-established after the Revolution of July 1830, albeit under a different name and deposited in different hands. Originating in insurrection, the new government is again founded on an exterior and superior elusive power. Sometimes such an exterior power might indeed be needed, to revolt in the name of necessity and driven by the actual situation, by extraordinary facts. But then soon legal and constitutional powers should take over, and not – as had happened in France after July 1830 – a few men who pretend they are the possessors, or depositors, of this extra-constitutional power and have the right to speak in its name: speculative

⁶ 'Le Roi (...) fait les réglemens et ordonnances nécessaires pour (...) la sûreté de l'État'.

spirits and some fanatics who believe in a philosophical theory and add their personal passions to it, followed by some ambitious men, be they great or little, capable or incapable, and a small portion of the multitude, for profit and for fun. (Ah! Men who possess their truth, passionate men, ambitious men and adventurers. *Voilà les français?*). A revolutionary spirit, *l'esprit d'insurrection*, said Guizot, is always contrary to liberty; a revolutionary power is unfair and passionate (*inique et passionné*), and does not carry liberty in its breast, but tyranny. Liberty is to be found amidst constitutional powers ruling orderly and respecting the laws. In Guizot's view a new spirit is needed, and this spirit should be a democratic one; not democratic in a revolutionary sense as opposed to an aristocratic one, but a democratic spirit in the sense that it covers the whole French society, the whole nation, and that it is open to differences of opinion and to discussion with the King and his government.

But it was too early for respect for the Constitution and the laws, as should be evident from the tumultuous meeting of the *Chambre des députés* on 24 February 1848, the day that King Louis-Philippe abdicated and a provisional government was elected which proclaimed the Second Republic. One of its leading figures, Alphonse de Lamartine (1790-1869) was almost shot that day, after the people had penetrated the Chamber. 'Don't shoot! Don't shoot! It is M. de Lamartine who is speaking!' The man holding the gun did not shoot; maybe he was shot himself during the June Days Uprising, *Les journées de Juin* later that year, after the National Workshops, which were meant to give work to the unemployed, were closed. A new theme comes up, expressed passionately by the socialist-anarchist Pierre-Joseph Proudhon on 31 July 1848: just as political equality is incompatible with a monarchy or an aristocracy, so balanced circulation and exchange of goods, and equality between production and consummation is incompatible with the kingship of money and the aristocracy of fortunes.

Then, on 22 June 1852, Charles de Montalembert (1810-1870), who was to become a well-known opponent to the Second Empire, ascertains that parliamentary government was buried: 'N'en parlons plus!' His speech reminds us of the one of Constant in the year VIII (1800) mentioned above. Now, in 1852 Napoleon is back (Louis-Napoleon Bonaparte, or Napoleon III; the cousin of Napoleon I), and the *Corps législatif* is no more than an illusion, a fiction, says De Montalembert; it had no right of initiative or amendment and only the possibility to vote yes or no. He himself is not disposed to accept a role in this fiction. A government should be based upon the reason and the interest of the people it governs. And this reason certainly is not opposed to discussion with the French people, and the interest of the people demands efficient, energetic en sincère supervision over the finances.

NO-VOTES

I could add a lot more fine examples of French parliamentary history. But let us return to recent history, and back to Europe. A few days after 29 May 2005, on 1 June, the Dutch also said no to the European Constitution. Do they also know about constitutions?

The states founded by the Dutch (albeit with help from abroad) since the 1789 Revolution in France are the Batavian Republic (which produced quite a few Constitutions in a short period), and since 1814/1815 the Kingdom of the Netherlands, a constitutional monarchy. The force of the present Constitution (*Grondwet*) of the Netherlands goes back to those of 1814/1815,⁷ although the Constitution underwent substantive changes over the last two centuries, as after the liberal revolution of the year 1848. The present text is based on the 1983 version. The Dutch are obviously not as experienced with new constitutions as the French.

There is yet another difference between the Dutch and the French constitutional or rather, parliamentary history that seems of major interest here. We have seen some examples of the French parliamentary discourses on the constitution in the many years they tried to work out a stable state and government after the Revolution of 1789. The French discussed liberty, equality and (the lack of) fraternity; they discussed human and civil rights, sovereignty of the people, tyranny of the monarch, poverty, and so on. Let us now turn to the formative years of the Dutch Kingdom and to its leaders who in 1814/1815 worked on the Dutch constitution and formed the Dutch post-Revolutionary (that is Restoration) state.⁸ We hardly hear any of the words just mentioned. And if so, it is often with rejection. Sovereignty of the people, democracy, responsibility; such ideas were considered extracted ideas, French constitutional experiments,⁹ far from real life (Dutch) politics.

The main concern among the members of the Constitution-Commission of 1814 were not philosophical, but practical problems. Sovereignty was a major dispute, indeed. Not, however, the original source of sovereignty, but the loss of the traditional sovereignty of the provinces to the new state. By far the longest

⁷ Two Constitutions were decreed, one in 1814, the other in 1815, because shortly after finishing the Constitution of 1814, Belgium was added to the Kingdom (seen from Holland ...).

⁸ The minutes of the discussions within the Constitution-Commissions of 1814 and 1815 can be found in H.T. Colenbrander, *Ontstaan der Grondwet*, two volumes, The Hague, Martinus Nijhoff 1908-1909. For our subject the discussions exclusively among the Dutch and without the Belgians (1814, volume I) are the most interesting.

⁹ So Gijsbert van Hogendorp in his letter to King William I, dated 10 May 1815 referring to the ideas of some Men of the South ('Heeren van het Zuiden'), i.e., Belgians: 'theorieën, afgetrokken denkbeelden en Fransche Constitutie'.

discussions in the Commission preparing the Constitution of 1814 were on section 39 of the original draft by Gijsbert van Hogendorp, on the power of the Provincial States in the new Dutch state. Another major point of discussion – apparently of equal importance – was the question of how to make this new status of the provinces acceptable to the people, to the regents in the provincial courts and political bodies. The strategy of Van Hogendorp, also president of the Commission, was to disguise the changes and to formulate carefully, so that no one would take notice, and to proceed slowly to prevent unrest; let the nation find out for itself (when it is too late to return to the old situation).

Let us now take a look at some of the reasons of the French and the Dutch to say No to the European Constitution in 2005, as examined by the European Commission itself.¹⁰ The main reason for a Dutch ‘no-vote’ was lack of information (32%); the second reason (19%) was loss of national sovereignty. Both these reasons tempted only 5% of the French no-voters to say no. One may say that evidently the actual information provided by the Dutch government, and the size of the country and its nation will have influenced the votes. Maybe the French were indeed better-informed; and surely their nation is larger. Nonetheless, I would say that the parallel with the constitutional history of the formative years of the Kingdom of the Netherlands is striking. Although there are of course many differences, the Dutch have the feeling that they are badly informed on the loss of sovereignty of their main political body, the national state in 2005, as they indeed had been poorly informed on the subject in 1814–1815 concerning the provinces. The important novelty is of course that in 2005 the people were asked, whereas in 1814 only 600 notables were asked to vote for or against the constitutional draft.

The French, on the other hand, said no because they expected negative effects on the employment situation in France, relocation of French enterprises and loss of jobs (31% of the no-voters), a fear that only tempted 7% of the Dutch no-voters to vote against the Constitution. The second French reason (26%) was the economic situation and the unemployment in France; only 5% of the Dutch said no for this reason; the third is that the Constitution is economically too liberal (19%); in the Netherlands again only 5% thought so. Economic reasons and even more, fear of poverty determine the French distrust of Europe. Social unrest and riots in the *banlieues* (or *faubourgs*, as they used to be called in the nineteenth century) come to mind; the Have-nots in revolt against the establishment. Back

¹⁰ For France see *Flash Eurobarometer 171 ‘The European Constitution: Post-Referendum France’* (June 2005), requested and co-ordinated by the Directorate-General Press and Communication of the European Commission, <ec.europa.eu/public_opinion/flash/fl171_en.pdf>, on p. 17; for the Netherlands see *Flash Eurobarometer 172 ‘The European Constitution: Post-Referendum Netherlands’* (June 2005), <ec.europa.eu/public_opinion/flash/fl172_en.pdf>, on p. 15.

to the main reasons of no-votes. In France 16 % of the no-voters thought Europe is not social enough, whereas in the Netherlands, it was for only 2% of the no-voters that the social nature of Europe was the main reason to say no to the constitution (note that in the Netherlands the Socialist Party was one of the main campaigners against the European Constitution). What's on a people's mind? The French and the Dutch only seem to overlap in their opposition to the national government, (its president) and its political parties (France 18%, Netherlands 14%).

One can learn a lot from the parliamentary and constitutional history of any European country when working on a proper constitution for Europe, I would say.¹¹ As to our question, perhaps we should conclude that French constitutional history is neither a garden, nor a graveyard, nor a museum, nor a minefield. It simply is French constitutional history and thus part of the French present, and future. As such it is, of course, also part of Europe's history, its present, and its future.



¹¹ As for the future: only 3% of the French and 5% of the Dutch no-voters thought the European constitution was not democratic enough; only 2% of the French and 5% of the Dutch no-voters said they do not want a European political union, or a European Federal State, or United States of Europe at all.