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Why is there No EU Constitution? An Analysis of Institutional Constitution-Making in the European Union

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Abstract
In 2001, European leaders met in Laeken, Belgium at the Convention on the Future of Europe to discuss the direction and agenda for a stronger, more united European Union, as well as consider the possibility of a European Constitution. The bulk and complexity of EU legislation has made decision-making and institutional operations quite difficult, and many EU officials believed that a more concise and consolidated document encompassing all current EU treaties would offer clarity and transparency, while also creating more opportunities for improved policy coordination and public participation. Over a two-year period, officials drafted a lengthy Constitution of over 250 pages, detailing the structure, procedures, and competences of the EU, and these elites felt that their hard work would be well received and accepted by the European public. However, when the draft was sent out to member states for ratification, it was rejected by both France and the Netherlands, and the EU postponed the constitutional project indefinitely. After all of the time, money, energy and resources invested in the European Constitution, why did this project fail? This thesis will examine why there is no constitution for the European Union, for given the pro-European stance of the majority of member states and the consensus of heads of states on the Constitutional Treaty, the document should have passed. The overarching hypothesis guiding this study is that the drafting process was not conducive to successfully creating a constitution for the multi-national polity; within this initial hypothesis, three sub-hypotheses are also proposed, each examining a particular aspect of the constitutional writing process. Data used in this research includes both quantitative and qualitative elements, although the majority of evidence is mostly qualitative in nature. Quantitative data consists mainly of polling results and other statistics on EU legislative data and EU public opinion. Main sources of information include primary documents from the constitutional deliberations (both working documents and final publications), press releases, and official public statements. Secondary sources from other academics are also consulted. This project first suggests that the structure and decision-making processes of the EU are not favourable to creating large pieces of legislation, such as a constitution. With complicated voting procedures and the insistence upon unanimity during many decision-making processes, the nature of the EU is such that perhaps only superficial and ineffective agreements could be reached regarding constitutional issues. Research on national referenda and public opinion leads to the second sub-hypothesis, arguing that the drafting process seemed undemocratic to the national populations and thus contributing to the Constitution's rejection. This hypothesis is considered in two parts: first, that there was not enough public consultation; second, that individuals participating in the drafting process were unrepresentative of member state populations. Conflicting motivations and national preferences of elites form the third hypothesis to explain the document’s failure, as different national agendas tried to create a constitution more favourable to some member states than others. Additionally, member states were committed to different EU goals, such as a federalist or confederalist Europe. The constitutional drafters had a plausible and laudable idea to create a “single legal personality,” making the EU better suited to “negotiate and ratify international treaties” and to become a member of “certain international organisations,” but the constitution also had numerous other goals, including military and social policy-making, which were not so well received by member states. The failure of the draft Constitution suggests that the EU must more clearly define its objectives before it can truly maximize its power and authority on an international scale. After analysing how the Convention on the Future of Europe was organised and managed, the degree to which Convention elites interacted with the European public, and the various disputes between delegates, it is clear that all three of this thesis’ hypotheses contributed to the failure of the European Constitution; nevertheless, not all of the hypotheses can be given the same weight, as certain factors had considerably more negative
effects on the Constitution’s outcome than others. Research on the different elite motives and agendas shows that there was considerable tension amongst participants, but this type of conflict is not exclusive to the Convention on the Future of Europe. Throughout EU history, member states have frequently disagreed with each other, over both serious and more minor issues, yet the institution has still experienced over 50 years of success in reaching policy and legislative decisions, even while increasing the number of member states attending EU conferences and thus increasing to the number of possible preferences and national biases. Therefore, it is difficult to attribute the failure of the European Constitution to this hypothesis alone. Evidence suggests that structural and procedural difficulties, as well as poor communication between elites and the European public, were more influential in determining the outcome of the Constitution’s ratification. With the increased importance of public opinion during the constitutional process, inadequate consultation with European citizens and limited opportunities for civic participation appear to have had the greatest hindrance to public acceptance, while the complicated structure and inefficient procedures inherent within the EU further exacerbated the suboptimal elite-public relations. As the EU continues to expand and assert itself as a single entity on the global stage, improved processes are needed to more efficiently and effectively create legislation and enact any new policies to benefit Europe as a whole. The constitutional project may have failed, but it has provided insight into the current problems facing the institution today, and if officials take notice of the EU’s present shortcomings, there is the opportunity to correct past missteps and to move forward towards a more unified Europe.

Keywords
European Union, Constitution, Laeken Declaration, Europe, Integration, Lisbon Treaty, Social Sciences, Political Science, Jessica Stanton, Stanton, Jessica

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Why is there No EU Constitution?

An Analysis of Institutional Constitution-Making in the European Union

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A thesis submitted for the degree of Bachelor of Arts in Political Science at the University of Pennsylvania
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I. Introduction

Since the inception of the European Coal and Steel Community, the precursor of today’s European Union, in 1951 with the signing of the Treaty of Paris, elites within the institution have continued to strive for increased integration and cooperation amongst member states, passing a wealth of treaties and laws to govern these countries; however, the bulk and complexity of this legislation has made decision-making and institutional operations quite difficult, often resulting in confusion and misunderstandings. As a result, many EU officials believed that a more concise and consolidated document encompassing all current EU treaties would offer clarity and transparency, while also creating more opportunities for improved policy coordination and public participation within what has typically been viewed as a secret and aloof organisation. In 2001, European leaders met in Laeken, Belgium at the Convention on the Future of Europe to discuss the direction and agenda for a stronger, more united twenty-first century Europe, as well as consider the possibility of a European Constitution. Over a two-year period, officials drafted a lengthy text of over 250 pages, detailing the structure, procedures, and competences of the EU, and these dedicated elites, who deliberated so intensely on how to best make the institution more democratic and efficient, felt that their hard work would be well received and accepted by the European public. However, when the draft Constitution was sent out to member states for ratification, the national referendums produced surprising and disheartening results. Both France and the Netherlands rejected the Constitution, and with such negative publicity surrounding the document, the EU postponed the constitutional project indefinitely.

After all of the time, money, energy and resources invested in the European Constitution, why did this project fail? This thesis will examine why there is no constitution for the European Union, for given the pro-European stance of the majority of member states and the consensus of
heads of states on the Constitutional Treaty, the document theoretically should have passed.

While debate and contention over the implications of a constitution would have been inevitable during the drafting process, delegates at the Convention on the Future of Europe believed that the desire for increased European cooperation, coupled with improved democratic procedures, would have won over any Euroskeptics, or at least quell enough anti-integrationist propaganda to allow for constitutional success; consequently, the French and Dutch rejections of the EU Constitution in 2005 came as a shock to the European community.\textsuperscript{1} The failure of the Constitution in these two founding member states raised even more questions about the validity and necessity of the document, and scheduled referendums in other countries were subsequently cancelled. Heads of state determined that it was necessary to take a new approach, and leaders decided that this new plan for the Constitution would consist of abandoning it in favour of a less controversial treaty.\textsuperscript{2}

Current hypotheses for the failed EU Constitution focus on external issues, such as the lack of a European \textit{demos} and the rise in nationalist rhetoric, rather than the internal deliberations and processes utilised when drafting the EU Constitution, and some alternative explanations imply that the constitutional project was doomed from the beginning.\textsuperscript{3} This research, on the contrary, will explore the procedural difficulties associated with the drafting of the EU Constitution, which this study proposes as having significantly impacted its demise. Political

\textsuperscript{1} The Convention on the Future of Europe was established in December 2001 as a result of the Laeken Declaration and met between February 2002 and July 2003 in order to write a constitution for the European Union. The Laeken Declaration set out goals of increased democracy, transparency, and effectiveness within the EU. The four central themes to guide the Convention focused upon the EU’s division of power, its need to simplify past treaties, the organization’s the institutional set-up, and the idea of a Constitution for Europe. Euro-skeptics are those people who view the EU with suspicion, worrying that the institution will have negative effects on their home country. Trust levels regarding the EU are low for Euro-skeptics, and Euro-skeptics also tend to be anti-integrationists, as they believe further integration will erode national sovereignty. Complaints about the high degree of bureaucracy and secrecy are also features of Euro-scepticism.

\textsuperscript{2} Most member states are content to simply hold parliamentary votes on EU treaties. However, the Constitution was considered a novel development, and as the public perceived the Constitution to make significant changes in EU framework and power, more countries wanted to put the document to national referenda.

\textsuperscript{3} \textit{Demos} is a sociological and political term used to describe a group of people that functions as a collective political unit, typically because the people possess a common identify based upon shared culture, heritage, and other mutual characteristics. The term can also be used to describe “the masses” or “the common people.”
scientists have concentrated mainly on either the content of the Constitution or on the after-effects of its failure, not how the Constitution came into existence, but by analysing the constitution-making process within the EU, this study will add to the body of knowledge surrounding the origins of the EU Constitution and could possibly hold implications for the future path of furthering European integration. The following three hypotheses will be tested to determine their effect on the outcome of the European Constitution: structural and procedural difficulties inherent in the EU failed to provide adequate direction for the task and poorly organised the debates during the Convention on the Future of Europe; elite-public interactions were fraught with problems, resulting in an uninformed, suspicious and uninterested public, who were responsible for voting upon the Constitution; and the conflicting motives and agendas of participants at the Convention caused tension and disagreement during debates and placed delegates’ focus on national, rather than European, issues, thus defeating the point of the Constitution. This thesis will also consider what new or different processes should be considered if the EU is ever to create a successful constitution. Though research should be analytical in nature, these results could give rise to some prescriptive suggestions about what not to do when attempting to create a constitution for Europe.
II. History and Background Information

The European Union today consists of four main entities: the Council of Ministers, the European Commission, the European Parliament, and the European Court of Justice. However, there are other numerous organisations that contribute to the functioning of the EU, and when studying the EU Constitution, the European Council is perhaps one of the most important official bodies, despite its lack of actual legislative power. Comprised of heads of state and government of the member countries, the European Council possesses influence over the EU’s political direction and advises EU policy decisions. Thus, the European Council was instrumental in the process of writing, publicising and advocating for the draft Constitution. Nonetheless, the complexity of the EU decision-making process meant that the European Council alone could not make the definitive decision regarding the future of Europe. In fact, the strong assertion of power by the European Council throughout the constitutional process somewhat altered the traditional balance of power within the EU structure, as power had typically been wielded between the “triangle” of the European Commission, the Council of Ministers, and the European Parliament.\(^4\)

The Commission will typically set the agenda, while the two “legislative” branches – the Council of Ministers and the Parliament – write and agree to any new laws via assent, consultation, or codecision.\(^5\) Yet, in spite of the majority of law-making power being held by other organisations, the European Council was the proponent of many key integration treaties, including the

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\(^5\) Decisions made via assent require the Council of Ministers to obtain assent from the European Parliament before undertaking important decisions, such as those related to the European Central Bank, accession of new member states, and electoral procedure within the EP. The consultation procedure demands that the Council of Ministers consult Parliament after receiving a proposal from the European Commission. The EP can then amend, reject, or approve the proposal. Assent and consultation are similar except that the EP cannot amend any proposal; it can only reject or accept. Consultation is the decision-making procedure for any changes to treaties. The codecision method is the most commonly used procedure in today’s EU, and under this format, the Commission will send proposals to both the Council of Ministers and the EP. Power is effectively shared between the two organizations. The majority of issues are covered determined by codecision, including health, environment, customs, transport, and education.
Maastricht Treaty, Treaty of Amsterdam and Treaty of Nice, and the entity’s influence is further demonstrated by this push towards a more united Europe.

Integration has been, and will most likely remain, a contentious issue within the European Union, as member states try to harness their collective power on the international stage while still maintaining their sovereignty and national identity. Though serious discussion of a European Constitution did not appear until the start of the twenty-first century, several European officials previously advocated for a United States of Europe, including Francois de Menthon, former chairman of the Legal Affairs Committee of the European Parliamentary Union (EPU). 6

In June 1948, prior to the creation of the European Coal and Steel Community (ECSC), de Menthon wrote and submitted a draft European Constitution to the Secretary of the EPU, Richard Coudenhove-Kalergi. Though little became of this particular document, efforts by those such as de Menthon laid the foundation for future deliberations on a united Europe. 7

Prior to 2000, several other members of the European Parliament (EP) attempted to create unifying legislation for the EU. In 1984, the EP voted in favour of the draft Treaty Establishing the European Union, which contributed to the later 1986 Single European Act (SEA) that in turn helped create the single market for the European Community and fostered further integration. Support for the Treaty Establishing the European Union, or what was known as the “Spinelli draft” in honour of Altiero Spinelli, a “founding father” of the European Union and former European Commissioner and member of the European Parliament, was overwhelming in the EP,

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6 The European Parliamentary Union was a private entity created in 1947, unaffiliated with the then European Coal and Steel Community, which aimed to form a constitution for a European Union based upon a framework similar to the United Nations. The organization did not exist long and soon merged with other political groups after the creation of the Council of Europe in 1949. The Council of Europe replaced the EPU as the main advocate for further European integration.

with 237 in favour of the document out of a possible 311 votes.\textsuperscript{8} Six years later, the Parliament agreed to further support the Spinelli draft by issuing a resolution on July 11, 1990 whereby the EP would draft a constitution in accordance with the main points of the 1984 document.\textsuperscript{9} More draft constitutions for the EU appeared in 1994, like the text submitted by the Committee on Institutional Affairs, but while these documents were positively received and disseminated, serious consideration was tabled for later deliberation.\textsuperscript{10}

Delegates at the 2000 Intergovernmental Council in Nice once again initiated debate on the future of the European Union but failed to substantially discuss the issue; consequently, a “Declaration on the future of the Union” was added to the Treaty of Nice, instructing the European Council to further address the EU’s future at their 2001 meeting in Laeken, Belgium. The summit in Laeken, known as the Convention on the Future of Europe, was not explicitly created to draft a European Constitution, but the meeting’s mandate did allow for the possibility; consequently, delegates decided to undertake this project in hopes of solving many institutional complexities and inefficiencies. Soon after members of the European Council agreed to the Laeken Declaration on December 15, 2001, they began preparing for discussions concerning the direction of further integration and possible new legislation and, most importantly, a potential European Constitution. According to the Laeken Declaration, the Convention would consist of 15 heads of state and government of the member countries, two members of parliament from each member state (30 total), 16 members from the European Parliament, and two


representatives from the European Commission; however, other persons were allowed to attend, including officials from the candidate or accession countries, bringing the total number of active participants to over 200 people.\textsuperscript{11} Leading the Convention was former French president, Valéry Giscard d’Estaing, along with vice chairmen Giuliano Amato and Jean-Luc Dehaene, former heads of state of Italy and Belgium, respectively. The inaugural Convention meeting was held on March 1, 2002, followed by a listening phase, study phase, and drafting period, with the final draft of the Treaty for a European Constitution submitted in June 2003.\textsuperscript{12} After this draft was offered to the Italian Presidency of the Council of Ministers, an Intergovernmental Council (IGC) was held between October 2003 and October 2004. Negotiations continued even after the transition to the Irish Presidency of the Council of Ministers, and by June 2004, attendees agreed to the first official draft of a Constitution for Europe and planned to meet four months later in Rome to seal their work with signatures.

There has been discussion surrounding the length of the Constitution, which is significantly longer than most national constitutions, and many anti-constitutionalists claim that the document was too complicated and too difficult to explain, thus decreasing its effectiveness and likelihood of success. Nonetheless, others assert that while rather hefty, the European Constitution would have been a significant improvement over several lengthy and overlapping treaties. A main benefit of the Constitution was that by having all of the legislation in one document, rules and policies would be easier to locate. Instead of sifting through approximately 17 different treaties, politicians and citizens would only have to search one document for

\textsuperscript{11} Member states included Austria, Belgium, Denmark, Finland, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. Candidate countries included Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia. Turkey, though not technically a candidate country, was also allowed to participate.

information. Writers claimed that the seemingly exorbitant length was necessary to include all of the Union’s competences and prevent it from becoming a super-state. The legal and technical aspects of the text greatly increased its length, particularly compared to other nations’ constitutions, but given the size and complexity of the institution, combined with the various and sometimes competing desires of member states, a short constitution would most likely have not adequately addressed all of the needs and concerns of EU countries. The European Constitution was comprised of 448 articles, whereas in comparison, Belgium’s constitution is approximately 200 articles long, Germany’s around 150, and the United States Constitution possesses a mere 34 articles. Nevertheless, given the multi-level nature of the EU and the need to address all issues in some depth to satisfy all of the member and accession states, a lengthy document was practically inevitable.

Although 53 political officials signed the Treaty Establishing a Constitution for Europe on October 29, 2004 and the European Parliament voted in favour of the text in January 2005, the document was still non-binding until every member state ratified the Constitution. Ratification came in various forms, depending upon member states’ own constitutions and public preferences. For example, the first two members to ratify the Constitution, Lithuania and Hungary, did so via parliamentary vote in 2004. However, some founding members such as France and the Netherlands insisted upon public referendums, and Irish law requires a referendum for any constitutional changes. A total of seven member states promised national referendums on the proposed Constitution, and the results of the Spain’s April 2005 referendum

15 The Irish government must hold a referendum for any changes to its constitution, and since a change in any EU treaties affects Ireland’s constitution, the Irish public will always have a direct say in Ireland’s position on any proposed Constitution for Europe.
76% in favour of the document – suggested a positive start to the ratification process. By the end of May 2005, ten member states had voted, either by referendum or parliamentary vote, in favour of the Constitution, but on May 29, 2005, a surprisingly roadblock appeared in the form of a “no” or “non” vote from France. Just a few days later on June 1, 2005, the Netherlands dealt another blow to the constitutional movement, with almost 62% of the Dutch public against the draft. Concerned over this lack of support and negative publicity, European leaders called for a “period of reflection” in order to determine the next course of action. Even though Luxembourg held its referendum after the French and Dutch rejections, all other member states cancelled their votes, and in 2007, an Intergovernmental Conference decided to simply amend current treaties and abandon the Constitution.

While the failure of the EU Constitution did not affect the status of past EU treaties, such as the Single European Act, Treaty on the European Union, and Treaties of Amsterdam and Nice, the Constitution’s rejection caused setbacks for several key reforms proposed in the document. Even though approximately 90% of the text of the European Constitution was taken from pre-existing treaties, the document still did make some rather important alterations to the structure of the EU and its decision-making processes. Thus, while in some respects the Constitution was a simplification and combination of pre-existing legislation, the Convention created innovative governing and procedural changes in four main areas: the founding principles of the Union; the institutions within the EU; decision-making procedures; and Union policies.

\[16\] During the two year “period of reflection,” EU leaders intended to host broad debates in each member state, hoping to gauge the level of support, both from the public and from the national governments, for the constitutional project. The period’s results indicate that EU citizens had high expectations for EU policies, but they knew very little about the processes and procedures within the organization. After the fallout from the French and Dutch rejections and the confirmed disconnect between the EU institutions and the public, EU leaders decided to convene a new IGC in 2007 to discuss what would become the Treaty of Lisbon.


\[18\] Church, C. H. and D. Phinnemore. 10.
The Constitution also added competences in the policy areas of administrative cooperation, civil protection, energy, humanitarian aid, space, sports, territorial cohesion, and tourism.

With the enlargement of the EU, more streamlined decision-making procedures were deemed necessary for the efficient operation and implementation of EU policies. The Constitution made changes to voting weights and processes to prevent gridlock and facilitate more effective methods of creating legislation.\(^{19}\) The use of qualified majority voting (QMV) would have been implemented for decisions made in the Council of Ministers, requiring a 55% majority of Council members who represented at least 65% of the total EU citizens.\(^{20}\) Unanimity would only be required for issues regarding defence, foreign policy, social security, taxes, and other sensitive topics, thus decreasing the possibility of policy stagnation. The presidential terms for both the European Council and the Council of Ministers would be increased to 2.5 years and 18 months, respectively, to maintain more continuity within the institution. The Constitution also attempted to simplify the structure of the EU by combining various “pillars” from earlier treaties, and at the Convention on the Future of Europe, delegates strove to create “One Treaty, One Legal Personality, One Pillar.”\(^{21}\) Confusing terminology was reduced to simpler vocabulary, such as “European laws” and “decisions,” rather than a complicated collection of regulations, directives, positions, actions, and other classifications, which would have made the EU

\(^{19}\) Church, C. H. and D. Phinnemore, 12.

\(^{20}\) Qualified majority voting (QMV) is a voting system used in both the European Council and the Council of Ministers. The number of votes per member state is dependent upon the country’s size and population, ranging from two votes to 10, and initially, in order for a motion or proposal to pass, the submission must receive more than 71% of the total number of votes. However, given than small countries actually gained an advantage under this system since their number of votes were disproportionate to their small populations, the Treaty of Nice adopted a new QMV requirement; the total population from those member states in favor of a proposal must equal 62% of the entire EU population, raising the minimum number of votes under QMV to approximately 73% of the total number of votes possible.

\(^{21}\) Piris, J.-C. 57.

The three pillar structure of the European Union consists of the Community Pillar (the European Community, the European Atomic Energy Community, and what used to be the European Coal and Steel Community), a pillar for the Common Foreign and Security Policy of the EU, and the third pillar represents European cooperation on police and criminal matters.
somewhat easier to understand.\textsuperscript{22} An instrumental change would have been the creation of a single legal identity for the EU. The Constitution would have united the legal personalities of the European Community and the European Union, making it easier for the institution to sign international agreements since it would then be able to act as a single entity, provided that all member states supported the EU’s position.\textsuperscript{23} Another aspect of the Constitution was its inclusion of the Charter of Fundamental Rights, which would have made the Charter part of EU law, an important step in ensuring human rights within the EU.

Increasing the democratic nature of the institution, the Constitution also would have made the EU more accountable to the public. For example, the European Parliament, a body directly elected by EU citizens, was given co-decision power in nearly all areas and was also given the final say on EU budgetary discussions.\textsuperscript{24} In addition, any amendments to the Constitution required calling a convention, a change from a previous treaty amendment where any alterations to EU legislation were decided upon by the European Council in private meetings. Despite claims that the Constitution would have taken power away from the states and given greater leeway to the EU, the Constitution would have in fact given the people the ability to offer their own proposals to the institution, via the Citizen’s Right of Initiative, where EU citizens would have been allowed to submit proposals to the EU, provided the proposal had at least one million signatures. National parliaments also would have been able to object to any proposed EU laws. Additionally, it appears as though it would have been easier for member states to leave the Union, as the Constitution included a withdrawal clause that did not require a renegotiation of the Constitution or a violation of treaty commitments if a nation decided to no

\textsuperscript{23} Piris, J.-C. 61
\textsuperscript{24} Church, C. H. and D. Phinnemore. 95.
longer be part of the EU. Consequently, it is understandable why many political scientists concur that while political deepening and integration might have been underlying goals of the European Constitution, the Convention’s aim was not to create a super-state or detract from national autonomy and sovereignty.²⁵ Despite a promising history of increasing integration and many constitutional drafts, the ultimate goal of a European Constitution was hindered by unexpected opposition. If the majority of the European Parliament supported the draft, and if previous conferences and summits indicated a desire for a concise and unifying Constitution, what led to this unexpected rejection and stagnation of the constitutional project?

²⁵ Church, C. H. and D. Phinnemore. 13.
III. Literature and Hypotheses

Following the failure of the European Constitution, political scientists have posited numerous explanations for “what went wrong” during the drafting and ratification processes, as well as proclaiming that the project was unnecessary and doomed to fail. Andrew Moravcsik, an expert and prolific writer on issues concerning European integration, asserts that there was little justification for the entire constitutional project, as the content of the EU Constitution made, in his opinion, only minor changes, rather than causing a “significant expansion of the EU’s substantive mandate.” Consequently, in his opinion, the rejection of the constitution was inevitable, and other arguments in favour of the document, such as consolidating earlier complex treaties and adapting the EU to increased membership, fail to sufficiently substantiate the claim that the EU needed such a constitution. No drastic changes regarding EU procedures were necessary, and the current “constitutional settlement” is more desirable than any actual reform; the EU is currently performing the duties desired by the public, and the status quo is sufficient. Jo Shaw supports Moravcsik’s assertion that the EU Constitution was unnecessary, and she believes that the EU lacked focus and clarity during the drafting process, which further diluted any reforms the Constitution intended to make. According the Shaw, the Court of Justice of the European Communities already views the European Community Treaty as the EU’s “constitutional charter,” so perhaps a true constitution was not needed, and she believes that the institution will continue to exist, with or without an actual constitution. Any successful constitutional project would require a more evolutionary document, “rather than as a perfect and

27 Moravcsik, A. 236.
28 The Court of Justice, one of the seven institutions within the EU, is charged with interpreting laws passed by the EU, and every member state is represented in the Court by one judge each. Effectively, a representative from each country already considered the EU to have legislation complementary to a constitution.
immutable rendering at a fixed moment of the political will of a popular sovereign and the equally perfect translation of that will into the constitutional law.”

Additionally, in Richard Bellamy’s opinion, any attempts to replace the current flexible “common law” tradition of the EU with a single document will be “an unnecessary and retrograde step.” However, as the previous section illustrated, the European Constitution would have indeed made considerable improvements to the decision-making processes within the institution, and Moravcsik fails to examine the other goals of the Constitution, which were not necessarily to “expand” the EU’s mandate but rather to consolidate and simplify its legislation. The constitutional project was indeed a meaningful endeavour, and this thesis will examine problems related to the structural and procedural aspects of the drafting process; the difficulties in elite-public interactions and public perception; and the conflicting motives and agendas of EU elites. However, it is also necessary to examine and refute alternative hypotheses.

One of the most common arguments against a European Constitution is the absence of a European demos. Jo Shaw emphasizes the distinction between the Westphalian conception of states and the institution of the EU and suggests that the EU fails to possess a “cohesive identity formation amongst the people…a vital prerequisite to sustaining a constitutional vision of the EU.” However, the “no-demos” argument, which asserts that the failure of the EU Constitution resulted from the lack of shared culture, history, and identity among European populations, assumes that the EU did indeed want to make the organisation into a federation. Recently, the concept of “demoi-cracy” has appeared in scholarly works, suggesting that the EU is meant to

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31 Shaw, J. 7, 9.
“create and manage not only economic but also democratic interdependence.”

Kalypso Nicolaidis differentiates between a “state” and a “union,” defining the EU as a “Union of States and Peoples,” and she believes that it would be detrimental to conceive of the EU as a state or super-state. Jan Erk also investigates the absence of a demos and suggests that a heterogeneous Europe would only be necessary if the EU was attempting to become a federation. Some political scientists believe that a demos is necessary to form a constitution, while others assert that a constitution will in turn create a demos. “Constitutional engineering” by elites, however, is an ineffective method for creating a collective identity, and a European Constitution would not be successful in creating a European identity, as it is unlikely that European populations will welcome any forced or contrived connections initiated and forced upon them by politicians in Brussels, particularly if they feel that their own national concerns are being ignored.

Nevertheless, if the EU was viewed as a demoi and the Constitution was suitably reflective of the various positions and needs of member states, the constitutional project could have increased a sense of European community. The lack of a shared identity does not have to limit the extent of integration possible, and Erk avers that a European federation is impossible due to the demos problem, but he suggests that if the institution took a broader approach to the document’s text, a constitution for the EU is not out of the question. It still remains to be seen as to whether the EU should create its own identity or find a balance between the preferences of individual nationalists and more transnational Europeans, but when examining the history of the EU, it would appear that in spite of the many nationalities and cultures within in the institution, Europeans still desire

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32 Demoi, being the plural of the Greek word demos, would be a collection of people who share a common identity. These separate peoples would then join together to form a larger political entity, while still maintaining their differences and distinct characteristics.
33 Nicolaidis, K. 5.
to increase integration and cooperation. Europeans do support the notion of a European community, as exhibited by the ever-increasing coordination of policies, such as border crossing, currency and educational exchanges, and public opinion will also show that the public was overall in favour of a European Constitution. Nicolaidis, rejecting the need for a European demos, insists that a viable constitution for the EU would celebrate the institution as a “demoi-cracy,” which shifts “from common identity to the sharing of identities, from a community of identity to a community of projects, and from multi-level governance to multi-centred governance.”

Diversity can be reconciled with integration, and by extension, a European Constitution is possible in spite of the different peoples across the continent. Thus, the failure of the Constitution must have been the result of other factors.

**Hypothesis I: Structural and Procedural Difficulties**

To begin, this thesis suggests that the structure and decision-making processes of the EU are not favourable to creating large pieces of legislation, such as a constitution. With complicated voting procedures and the insistence upon unanimity during many decision-making processes, the nature of the EU is such that perhaps only superficial agreements could be reached regarding constitutional issues. An extension of this structural argument is that because the EU is conducted mainly via permissive consensus, national referenda on the constitution – intended to meet public demands to make the EU more democratic – actually undermined EU support.

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35 Transnationalism places greater weight on institutional laws, treaties, and other agreements, and in the case of the EU, a transnationalist would rather have EU supremacy that national sovereignty on a wide range of issues. Nationalists are the direct opposite of transnationalists, for they believe national independence and power to be inalienable, and though states may cooperate and coordinate certain on policies, nothing should detract from individual sovereignty. Transnationalism has increased in appeal due to the rise in legislation and organizations that transcend country borders.

36 Nicolaidis, K. 5.

37 The term “superficial” will be used to describe treaties and agreements where the signing of the documents symbolised more than the actual content. Superficial treaties will tend to be rather ineffective and not carry out the goals they proclaim. IGCs will also be considered ineffective if they fail to complete their assigned tasks pertaining to their respective agreements.
Permissive consensus refers to the idea that elites and other governing officials are able to pursue their own agendas due to the lack of public interest. Under this framework, the EU can accomplish the majority of its objectives without any public opposition, and Europeans passively accept EU decisions. Since EU citizens do not normally participate in EU decision-making processes, referenda may have seemed too foreign, and populations may have rejected the Constitution out of fear and lack of familiarity with the procedure. Richard Bellamy draws a comparison between the Constitution and the Charter of Fundamental Rights of the European Union, stating that each document was written by institutional bodies not electorally accountable, and although parliamentary representatives participated in each convention, neither process was extremely democratic; yet, the Charter passed while the Constitution failed, suggesting that legislation within the EU can indeed be enacted without intensive public consultation, as the majority of European citizens accepted the Charter, despite little to no involvement in its creation. Achim Hurrelmann asserts that the use of permissive consensus limits public involvement, making it difficult to suddenly incorporate citizens into the legislative decision-making process. He views the constitutional process as one of democratisation, implying that like other democratisation processes, there will inevitably be conflicts and disputes. He also emphasises the need for both instrumental and symbolic integration, normative legitimacy, and social acceptance. Instrumental integration involves institutionalised efforts to increase cooperation and coordination among EU member states, such as establishing structured decision-making processes within the organisation and designing a system of citizen rights. Symbolic integration does not necessarily involve such concrete, legislative matters, although symbolic

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38 Bellamy, R. 184.
The Charter of Fundamental Rights of the European Union enumerates inalienable rights held by EU citizens and residents, categorized into six sections: dignity, freedoms, equality, solidarity, citizens’ rights and justice. The Charter was officially completed and signed in 2000 but was not legally binding until after the ratification of the Treaty of Lisbon in 2009.
integration, like an official EU flag and anthem, is most certainly visible to European populations. Normative legitimacy refers to the idea that laws and institutions are legitimate if the people living under the authority of these constructs believe they are justified. People will comply with the rules because they will feel morally obliged to do so, and this trust and obedience to the laws and institutions legitimizes their existence. Social acceptance relates to the degree to which the public concurs with and obeys the laws of the government, as well as its overall approval rating. Policy networks to include citizens in government and widespread mobilisation of the public can also help increase a government’s social acceptance.\textsuperscript{39}

The notion of path dependency may also prove useful in this line of inquiry, as it is possible that the way in which the EU was institutionally designed made it difficult for a constitution to be written and passed.\textsuperscript{40} For example, because earlier agreements insisted upon unanimity, the EU was intended to be a stable institution, rather than one that made large, sweeping changes. The failure of the EU Constitution and the maintenance of the status quo lend support to arguments that historical institutionalism can affect the trajectory of outcomes and that the ideas and standards engrained in the EU during its conception help determine the results of attempts at policy change.\textsuperscript{41} The complex procedures of EU decision-making may be too outdated for today’s larger membership and the tasks that the EU desires to tackle. Several empirical implications follow from this hypothesis. First, if this hypothesis is correct, it should be the case that most agreements in the EU are mainly incremental and do not make drastic changes. This thesis will analyse the Maastricht Treaty, Treaty of Amsterdam, Treaty of Nice,


\textsuperscript{40} In the social sciences, the outcomes of path dependent processes rely upon history, and the sequence of events affects what and how subsequent events occur. Certain consequences are excluded or permitted depending upon previous actions. Historical institutionalism is also related to path dependency, where institutions can determine social behaviour due to their structure and outputs. A simplistic view of path dependency states that “history matters.”

the Charter on Fundamental Rights and the draft Constitution, looking at whether these documents truly made changes or if they were primarily symbolic compromises between intergovernmentalists and supranationalists. Second, one might expect to find that a large percentage of attempted EU legislation failed and that it typically took a considerable amount of time for any legislation to be passed.

**Hypothesis II: Elite – Public Interactions and Public Perception**

Moravcsik suggests that the drafting process was primarily “an exercise in public relations,” and he believes that the collapse of the Constitution proves that the public is not interested in EU issues, regardless of whether there were few or many opportunities for citizen involvement. Increased opportunities for public debate do not necessarily create more public debate, states Moravcsik, and the discussion surrounding the EU Constitution did not significantly increase the political legitimacy of the organisation. When considering the actual text of the Constitution, low public voting could indicate a situation in which the issues involved were not salient to the voting population. However, in order to increase public interest in EU politics, the institution would need to take part in debate on social issues that are most important to European citizens, those such as healthcare, education, and welfare. Unfortunately, this action would in turn create intense opposition to the EU, as social policy is mainly regarded as a national concern. Any attempt to raise the saliency of EU issues would have negative effects for the institution, possibly hindering the organisation’s effectiveness. Moravcsik instead

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42 Intergovernmentalists prefer that within a multinational institution, the individual member states hold the power, and decisions typically required unanimity. National governments are the primary actors in these organizations, and rarely can member states impose their will upon fellow governments. Conversely, within a supranationalist entity, national governments cede the majority of their power to the elites in the organization. Although member states still maintain some leverage, decisions are made according to majority rule, meaning that states may not always wield a veto power and, in some instances, may be compelled to abide by certain agreements. In terms of the EU, intergovernmentalism is associated with negotiations between national governments, and supranationalism is represented by EU legislation that supersedes national law and does not demand a unanimous agreement.

43 Moravcsik, A. 220.
recommends that any further changes or amendments to current treaties be proposed and implemented in “piecemeal” fashion, rather than in one, all-encompassing document, eliminating the need for public relations stunts, such as the constitutional project, to win over the citizenry. Proposals on specific issues would be more easily ratified and would attract attention only from those who truly cared about the legislation, contrary to the masses of EU citizens who protested the Constitution out of fear and incomprehension.

In effect, Moravcsik criticizes not only the premise for the constitutional project but also the idea that the Union needs to become more democratic. He blames the failure of the EU Constitution on the underlying premises, rather than the procedural process, viewing the constitution’s failure as an ineffective publicity stunt, as though a draft constitution was an attempt to create enough interest in the EU to “reverse the sagging popularity of the organisation.” The Constitution, an effort to make the EU more “democratic” has, according to Moravcsik, actually had the opposite result, decreasing the organisation’s popularity and legitimacy. Moravcsik also claims that legitimacy does not necessarily require public involvement, citing the legitimacy of insulated institutions, such as the European Court of Human Rights, which has virtually no elements of direct democracy or public involvement in the electoral process of the court’s presidents.

Conversely, this study suggests that public participation and interest was low due to poor communication and inadequate information about the constitutional project. Granted, the public

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44 Moravcsik, A. 237.
45 Moravcsik, A. 220.
46 The European Court of Human Rights is not subject to popular vote. Rather, judges are elected by the Parliamentary Assembly of the Council of Europe, and while participants in the Parliamentary Assembly are nationally elected members of each country’s parliament, the public does not get to vote directly on ECHR justices. In addition, other positions within the ECHR are chosen by the judges themselves, and thus national populations have little say in determining who can interpret and clarify laws that are binding for all EU citizens. Nevertheless, there have been few complaints about the current procedures, and citizens appear to willingly adhere to ECHR decisions.
relations side of the Convention on the Future of Europe was badly organised and executed, but this failure was due to ineffective interactions between elites and national populations, not the complete lack of desire for a constitution on behalf of European citizens. Research on national referenda and public opinion leads to the second hypothesis, which argues that the process of the Constitution’s drafting seemed undemocratic, exclusive and confusing to the national populations, which in turn contributed to its rejection. These aspects of the document and drafting process will be considered in two parts: first, that there was not enough consultation with the public; second, that individuals participating in the Convention on the Future of Europe were unrepresentative of the member state populations. Public involvement is also seen as a problem in the EU, as “citizens want more democratic control, yet do not want to participate in EU wide elections.” Some positive steps taken by the draft Constitution included the Protocol on the Role of National Parliaments in the EU, which stated that the European Commission must keep national parliaments adequately informed of EU developments, and the creation of a more transparent voting system in the Council of Ministers, where members must defend their positions on issues. It also included the Citizen’s Right of Initiative. These developments suggest that there were many positive democratic elements included in the document, and thus perhaps it was not so much the content of the EU Constitution but instead the perception of the text that hindered its acceptance. Officials championed the Constitution as increasing the democratic nature of the institution, but inadequate communication of the improvements could have hindered public acceptance of new reforms. The notion of a constitution carries considerable weight and importance, and the European public feared the consequences of ratifying a document of which they understood very little. Lack of consultation may have caused

47 Bellamy, R. 186.
European populations to doubt whether delegates at the Convention were truly advocating on their behalf, and inaccurate or imbalanced representation during the drafting process would have raised suspicion about whom the Constitution would actually benefit. These concerns indicate that poor interaction between elites and the public had a significantly negative impact on the Constitution’s ratification. Due to how the Constitution was written, its content was easily misrepresented, and Nicolaidis claims that the Constitution was presented poorly to the public and perceived negatively by both those in favour of further integration and those who preferred a more inter-governmental approach; consequently, the “in-between” and compromising nature of the Constitution upset nearly everyone and satisfied no one, for both supranationalists and intergovernmentalists blamed each other for the Constitution’s failure.

Since the content of the Treaty of Lisbon, the latest attempt at passing new and amending current EU legislation, varies only slightly from the draft EU Constitution, national government and citizen involvement could be seen as a significant missing component of the drafting process. In terms of the content of the Constitution, Hurrelman claims that it contained “modest, yet significant improvements in the EU’s democratic quality specifically tailored to conform to the character of European society.”\textsuperscript{49} Thus, it is unusual that so many people rejected the Constitution while still wanting the EU to become more democratic. While a scatter plot of various preferences reveals that the draft constitution strove to strike a balance between competing agendas and that there is very little bias or favour towards particular member states, the drafting process may have appeared more undemocratic and elitist than EU officials intended. For example, only 66 participants at the Convention on the Future of Europe were allowed to vote on the draft constitution, and few minorities were represented, making the procedure seem exclusionary; as a result, public perception predicted that under an EU

\textsuperscript{49} Hurrelmann, A. 351.
Constitution, Brussels would dictate the laws and policies of Europe, depriving national
governments of their power.\textsuperscript{50} Other research has also suggested that the intergovernmental
conferences (IGCs) failed to include substantial public participation and input, resulting in
further decreased support for the EU Constitution.\textsuperscript{51}

Current literature indicates that the IGC on the EU Constitution in 2003-2004 was
conducted mostly in secret, with little to no public consultation or debate, and this lack of
transparency could have counteracted any attempts at increasing the democratic nature of the
institution. One concern is that an absence of genuine deliberation between EU elites and
national populations about the Constitution detracted from the intended reforms to add more
public input and involvement into EU governance. As a result, the rejection of the Constitution
could have had less to do with its text but more with the process by which it was written. In
addition, if the participants at the EU Convention and IGCs were not truly representative of
national populations, citizens may have felt as though referenda were merely guises, attempts to
delude people into thinking that they had played a greater role in the drafting of the Constitution
than the facts suggest. Comparing public discourse about the Constitution during the drafting
process reveals the limited extent of public engagement with the constitutional process, and this
thesis further investigates interactions between the Constitution’s drafters and their respective
citizens.

\textsuperscript{50} Pennings, P. and C. Arnold (2008). “Is Constitutional Politics Like Politics “at Home”? The Case of the EU

Rosén, M. and M. Broman (2006). The EU Constitution and the Challenge of Ratification, Misperceptions of
Domestic Win-Sets or Problems Resulting from Elite Deliberative Processes?. San Diego, CA, International Studies
Association Annual Meeting. 9.
Note how the draft Constitution, while having a slightly small preference for “right issues,” did attempt to balance the competing interests of large and small member states, as well as balance the different views from both left and right parties. Having the Constitution rather distanced from the specific preferences of member states suggests that there was a high probability of reaching a consensus amongst Convention participants. Thus, it can be inferred that the process of writing the Constitution was more problematic than the actual text itself.\textsuperscript{52}

To determine the validity of this hypothesis, this research will look at the general openness of the Convention and IGCs' proceedings – if sessions allowed public observance and/or participation – and in order to see how democratic the drafting process was, this thesis will also analyse who participated in the constitutional process, who voted, how voting was limited, and the number of national government representatives, civil society representatives, and other lobbyists and interest group members attending the Convention.\textsuperscript{53} In addition, this study examines press releases and other documents to assess whether elites informed the public of what the EU was doing and trying to achieve. Public opinion data and Eurobarometer results will also shed light on the public’s perception of the EU and the EU Constitution.\textsuperscript{54} Rather vague and uninformative public statements from the Convention and IGC will prove that the delegates made little or insufficient effort to engage the public.

**Hypothesis III: Conflicting Motives and Differing Agendas**

The EU constitution appears to have suffered from an overall disagreement about what the EU should actually be – a European federation or a simple coordination between national policies. Was the EU Constitution meant to “replace” or “complement” national constitutions? The text of the draft asserts that it would not create a federalist republic or “United States of Europe,” and yet the mere act of drafting a constitution is almost automatically tied to federalist

\textsuperscript{53} To determine if and to what degree a process is democratic, this thesis will mainly consider the degree to which citizens were accurately represented, the amount of public consultation, and the actual voting and participation procedures (or who was permitted to vote and to offer their opinions). One interpretation of democracy and its relation to the EU Constitution suggests that the Constitution must be drafted in the most democratic fashion possible, while the opposing side claims that the Constitution must be passed before the EU can implement more democratic principles in its procedures. Those people of the former opinion believe that a public vote was necessary to the Constitution’s legitimacy and that referenda would make the EU more democratic.

\textsuperscript{54} The Eurobarometer consists of a series of surveys conducted at the request of the European Commission. Eurobarometer reports contain public opinion data on a range of issues regarding the European Union.
theories. At the Convention on the Future of Europe, delegates sorted themselves into those who wanted “more” or “less” Europe, illustrating two of the central competing theories of supranationalism (statist) and intergovernmentalism (unionist). Smaller countries formed the former group, desiring to strengthen and possibly expand EU powers, while larger member states congregated in the latter camp to maintain their unanimity rule and protect state sovereignty.

Conflicting motivations of elites and varying levels of commitment to the Constitution by member states form the third hypothesis for the failure of the EU Constitution, as different national agendas tried to create a constitution more favourable to some member states than others, and a lack of commitment could have resulted in less national discussion and promotion about the Constitution. Additionally, member states were committed to different EU goals, such as a federalist or confederalist Europe. Steven Everts, a senior research fellow at the Centre for European Reform, asserts that the constitutional drafters had a plausible and laudable idea to create a “single legal personality,” making the EU better suited to “negotiate and ratify international treaties” and to become a member of “certain international organisations,” but the Constitution also had numerous other goals, some of which were not so well received by member

55 The EU has many structural features of a federation, such as two orders of government, a wide range of nationalities and ethnicities and shared competences; however, a formal or supreme constitution is a very symbolic characteristic of a federal government, and thus the notion a European Constitution could be considered a way to give the institution more federalist powers.

Altiero Spinelli, one of the founders of what is today the European Union, was a staunch advocate of European federalism, believing that only a federalist union would prevent countries from warring with each other. In fact, Spinelli strongly advocated for a federal constitution for Europe and afraid that nationalistic tendencies would engender more hostility on the continent, he was disappointed when states maintained sovereignty after the creation of the ECSC. This maintenance of sovereignty is embodied in the subsidiarity principle, which says that EU institutions should manage only matters that are more efficiently handled at a supranational level than at a national level by individual member states.

56 Delegates desiring “more Europe” strove for further EU involvement in social and foreign diplomacy issues, as well as a deeper commitment to integration and cooperation on a multinational level. Those participants taking a “less Europe” stance wanted to keep EU supremacy to a minimum, decreasing the power of certain EU institutions such as the European Commission.

Subscribers to the supranationalist theory prefer to view multinational organizations as states, having a type of federal power over the individual members, while intergovernmentalists think of institutions as a collaborative union of separate governments that maintain their national sovereignty.
However, in addition to the aims of the Treaty of Amsterdam, some EU officials wanted to extend the organisation’s reach to other policy areas, such as international relations and defence, a controversial proposal that was inconsistent with earlier assertions that the Constitution was merely a compilation of previous treaties and agreements. While some EU scholars believe that the constitutional project did have some validity, many posit that the Constitution resulted in an ineffective compromise, due to the lack of direction and clarity about the EU’s identity and future. While delegates at the Convention and IGCs described the Constitution as a more concise reiteration of past legislation with improved democratic features, the draft also contained added sections on foreign policy, a potential European defence force and several other topics. In terms of military and security issues, some EU countries fail to see the purpose of an EU defence force, particularly those nations already members of NATO, and many members did not want the institution to overstep its boundaries. Although contention over the inclusion of foreign policy in EU legislation could imply that the content of the Constitution was the most influential in the document’s failure, the handling of such disagreements over the text could also support the procedural-based hypotheses, suggesting that if elites had negotiated more thoroughly and were given more time and resources to form a consensus on policies, the Constitution may have passed. Additionally, the EU tried to make the constitution similar to those of many member states, and efforts of delegates and EU officials to try to apply a national form of constitution-making and deliberation to a post-national polity could have affected the document’s rejection. The EU cannot be classified by a “straightforward formula of integration

58 The Treaty of Amsterdam, ratified in 1997 and implemented in 1999, amends the 1992 Treaty of the European Union and specifies goals of the EU, including the objectives to “maintain and develop the Union as an area of freedom, security and justice in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (Article 1 Treaty on European Union).
or federalization,” and Simone Chambers claims that “constitutionalism in an age of democratic diversity is more about keeping a conversation going than getting all the parties to sign on the dotted line at one time and place.” Consequently, the failure of the Constitution could have resulted from the fact that the drafters approached the constitutional process with the wrong agendas and attitudes.

Research will seek first-hand accounts of the drafting process, examining which delegates were most influential, what outside forces – such as lawyers and lobbyists – influenced and participated in the Convention ad IGCs, and also will also consider how collaborative the process was and who were the major authors of the text. Speeches from key players will be analysed to determine issues of national importance for specific member and accession states, and the dialogue between members will reveal if participants agreed on what the Constitution should include and how certain topics should be addressed. Looking at the major issues of contention, as well as any problematic “pet projects,” will also reveal the extent to which officials were pursuing their own national agendas instead of focusing on strengthening the EU. In addition, interventions by Convention members will indicate whether any countries were given preferential treatment or more privileges during the drafting process. If delegates from certain member states saw the Convention and IGCs as exclusionary or felt that their nation’s needs were not being considered, then this perceived procedural unfairness could have created tension and dissent, ultimately affecting the document’s future. Furthermore, it is not quite clear as to the exact reason for creating an EU Constitution. Certain member states also might have possessed ulterior motives when supporting or attacking the Constitution. If elites did in fact have conflicting motivations and were intent upon pursuing more nationalistic goals than European ones, research should discover conflicting public statements from various heads of state and

59 Shaw, J. 23.
other officials. Conflicts amongst participants will be evident in constitutional proceedings, although not all primary documents are available for analysis. The acquiescence to specific demands from member states, as well as the inclusion of “pet projects” or other items essential to avoid a veto, would offer evidence in support of this hypothesis on differing elite motives and agendas.
IV. Hypothesis I: Structural and Procedural Difficulties

Enacting change within the European Union has rarely been easy, given the complicated procedures, insistence upon unanimity, disagreements over voting weights and other areas of contention. Most EU officials prefer bargaining on an elite level without involving the public, but even peer-to-peer discussions have historically run into problems. Gains made by EU treaties are often described as “modest,” suggesting that broad, sweeping changes are difficult to enact under such a complex governing system. Analysing a few of the most recent EU treaties – the Maastricht Treaty of 1992, the 1997 Treaty of Amsterdam, and the Treaty of Nice and the Charter of Fundamental Rights, both signed in 2000, research shows that intergovernmental conferences (IGCs) were fraught with complex procedures and despite political desire to create new legislation, the variety of decision-making mechanisms decreased the effect and extent of any conclusions. In addition, this chapter will compare the IGC format with that of the conventions and will relate prior successes and failures to the Convention on the Future of Europe. This comparison suggests that while the “convention method” might be more appropriate for interacting with a wider range of participants and citizens, the European Constitution still faced numerous procedural difficulties, despite improvements from past IGCs.

Difficulties with Intergovernmental Conferences

Although intergovernmental conferences have been frequently used throughout the EU’s history, these conferences do not have many formal regulations, with only limited rules stated in Article 48 of the Treaty on European Union (TEU); while over-regulation can cause problems on numerous issues, the lack of structure associated with IGCs has contributed to ineffective debate.

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and resulted in less meaningful legislation. Although the TEU describes how to convene and conclude an IGC, there are no guidelines or procedures on how to specifically run the actual substantive part of the conference. In addition, during IGCs many decisions require unanimity, meaning that the status quo within the institution is very difficult to change, although without proper guidelines, there is room for consensus and agreement without having to resort to formal voting. However, the absence of strict guidelines means that those elites convening an IGC have considerable flexibility in arranging the time frame of a conference, allowing them to choose when to begin and end negotiations. This freedom comes with both benefits and disadvantages; organisers can schedule conferences and set deadlines, which are necessary to keep the conferences on track, but actors can also use their influence to hold meetings at times more favourable to their nation’s political preferences. Furthermore, elites can oftentimes be more ambitious than practical when establishing an end-date for an IGC. Deadlines are important to keeping conversation moving, but self-imposed time limits can also narrow the scope of the conference’s agenda. Additionally, the pressure of meeting deadlines has sometimes led to early-morning concessions and “suboptimal” agreements forged just before a treaty’s due date.

Most IGCs begin with a preparatory phase, during which member state governments can draft their proposals on how to reach amicable compromises on a range of issues. However, the process of determining which issues to discuss is not always smooth. The agendas at these conferences are often uncertain and unpredictable, as various actors try to get their issues of

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Article 48 of the TEU outlines the ways in which EU treaties can be amended, either by ordinary revision procedures or simplified procedures. No specifics are given as to which types of amendments can be enacted via the simplified procedure versus the ordinary revision process, and the text merely states that conferences will be convened to discuss any proposed changes.

62 Christiansen, T. and C. Reh. 140.

For example, negotiations on the Treaty of Nice ended around 4:40am after 91 hours of debate when all conference delegates were fatigued, worn out, and stressed to reach a final conclusion on voting weights within the Council of Ministers.
choice discussed during negotiations. The European Commission will occasionally offer input; activists and lobbying groups will also advocate their causes, and the national governments of member states, of course, play a role in laying out the schedule of debate.\textsuperscript{63} Officially, the European Council is in charge of an IGC’s mandate, meaning that heads of state or government are technically the “agenda-setters in EU reform.”\textsuperscript{64} Moreover, the agenda is not completely controlled by the current actors within the EU. Agenda items have frequently already been decided upon by previous meetings by officials no longer in office, and new IGCs are tasked with addressing these “leftovers.” With so many contributors to an IGC’s agenda and without any formal rules or procedures, conflict typically arises even before the main negotiations begin.

The structure of IGCs consists of three levels: personal representatives are charged with the legal and technical content of treaty texts; foreign ministers are responsible for the political outcomes of the debates; and heads of state or government make the final decisions at the conclusion of an IGC.\textsuperscript{65} Personal representatives are most active in preparing and briefing delegates on issues to be discussed at the conference, but foreign ministers have been known to disagree with work done at the personal representative level, and interaction between these two groups can cause disruption during the conferences, particularly if ministers dismiss agreements already reached on the legal-technical level.\textsuperscript{66} During past IGCs, heads of state or government frequently had to deal with unresolved issues from the other two levels, and this set-up often resulted in hasty, last-minute decisions. Heads of state or government often attempt to be involved in all aspects of an IGC, but they are most actively present towards the end of a conference, suggesting that this particular structure is not best suited for easy communication and

\textsuperscript{63} Christiansen, T. and C. Reh. 149.  
\textsuperscript{64} Christiansen, T. and C. Reh. 158.  
\textsuperscript{65} Christiansen, T. and C. Reh. 181.  
\textsuperscript{66} Christiansen, T. and C. Reh. 184.
interaction between all three levels of IGC participants, as the actors rarely have the opportunity to meet and share ideas.\textsuperscript{67} Additionally, when considering the EU as a whole, the multi-levelled institutions frequently have competing interests, and poor coordination on legislation between the Council of Ministers, European Parliament and European Commission causes problematic governance; decision-making in the EU also does not follow explicit or clear rules, adding further complexity to already multi-faceted issues such as enlargement or writing a constitution.\textsuperscript{68}

\textit{Maastricht Treaty}

The Maastricht Treaty, signed on February 7, 1992, officially created the European Union and restructured the institution into three pillars: the Community Pillar, Common Foreign and Security Policy Pillar, and the Justice and Home Affairs Pillar. This treaty also laid the foundation for the European Monetary Union and the implementation of the Euro currency; additionally, it introduced the idea of a European citizenship, attempting to increase integration and create a greater sense of community among member states. However, the Maastricht Treaty has been considered only a mediocre success by many political scientists, as the agreement, while not a total failure, did not effectively address all issues on the agenda and encountered surprising difficulty during the ratification process. Poor timing and a lack of consistency contributed to the troubles at the Intergovernmental Conference on Political Union, the meeting that produced the Maastricht Treaty. The decision to hold a conference on political unity was made less than two years prior to the event, giving busy politicians and government elites little time to gather information and formulate proposals on various agenda items. In particular,

\textsuperscript{67} Christiansen, T. and C. Reh. 186.
participants were unable to fully draft positions on European defence concerns. The Maastricht Treaty developed the Common Foreign and Security Policy (CFSP), but the agreements made between 1990 and 1992 appear to have been unsatisfactory, given that the issue of foreign policy was such a hotly debated topic at the Convention on the Future of Europe, held less than a decade later.\textsuperscript{69} The text of the Maastricht Treaty even stated that member state government would need to revisit the CFSP at another IGC, set for 1996. This treaty also admitted that other issues, such as energy, tourism, and co-decision and legislation-making procedures, would have to be resolved at a later date.\textsuperscript{70}

Moreover, procedurally, there were difficulties associated with the rotating presidency, as well as the ratification process.\textsuperscript{71} The IGC began under the Luxembourg presidency, which appeared to be fairly capable of brokering deals amongst members; however, the Dutch presidency soon took charge in the latter half of 1991 and changed significant portions of the treaty’s text that had already gain participants’ approval. Outraged by this presumptive move by the Netherlands, 10 out of the 12 member states at the IGC voted against this new document on September 30, 1991, known as “Black Monday,” and the Dutch presidency, recognising its unpopularity, returned to the original draft.\textsuperscript{72} Once the text was finalised and put to ratification, the Maastricht Treaty encountered opposition in several member states, which totalled approximately 25% of EU membership. Denmark, France, and Ireland all held public referenda, and while the Irish ratified the treaty with almost 70% approval, France only narrowly passed the agreement with 51.05% in favour, and Denmark rejected the Maastricht Treaty on June 2,

\textsuperscript{69} Norman, P. 10.
\textsuperscript{71} The president of the Council of the European Union rotates between member states on a six-month schedule. Occasionally, presidents will work together and coordinate over a one-and-a-half year period to maintain continuity, as well as to pass along experience from older member state presidents to those countries who have just recently joined the institution.
\textsuperscript{72} Dür, A. and G. Mateo.
The Danish referendum on Maastricht was the nation’s first national referendum, and the position of the Danish public reflected concern about how much integration would affect national autonomy. The lack of popularity with both the document and the process also suggests that elites should be wary of experimenting with new political procedures using important international legislation. Denmark eventually held a successful second referendum in 1993 but only after several changes were made, including the addition of four Danish “opt-outs” that intended to protect Denmark’s sovereignty. Criticism from the United Kingdom’s Labour Party also created some difficulty for the treaty and almost caused an upset within the House of Commons, illustrating that ratification was problematic for parliaments as well. Consequently, much of the difficulty regarding the Maastricht Treaty points towards poor procedures, supporting this thesis’ first hypothesis.

_Treaty of Amsterdam_

The 1997 treaty signed in Amsterdam was the result of long negotiations that started more than two years prior in Messina, Sicily, but despite the long conference, the agreement achieved only moderate success. The Treaty of Amsterdam gave the EU more power in the realm of foreign policy and emphasised the institution’s role in international peacekeeping. It also increased the use of the co-decision procedure and made EU entities more accountable to its citizens. However, the goals of the treaty were not met in their entirety, and participants encountered several difficulties during the negotiation process. Although delegates at this IGC encountered several difficulties during the negotiation process. Although delegates at this IGC

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75 Member states within the EU can negotiate opt-outs, meaning they do not have to participate in and abide by EU regulations in certain policy areas. Today, Denmark and the United Kingdom have obtained the greatest number of opt-outs (four each), while Ireland has two opt-outs, and Poland and Sweden have one apiece. The opt-outs include special conditions regarding the Schengen Agreement, the European Monetary Union, European citizenship, the European Security and Defence Policy, Political and Judicial Cooperation in Criminal Matters, and the Charter on Fundamental Rights.
were better prepared than those at the Political Union IGC, the neutrality of the overseeing presidencies was again called into question. Many member states believed the presidencies to display considerable indifference to certain issues, as well as a fair amount of home-bias for other items of national concern. The Italian presidency did little other than observe the IGC and was criticised for its lack of organisation and preparation during negotiations; the subsequent Irish presidency was slightly more involved during the conference, but it was also critiqued for avoiding controversial topics of debate and for failing to remain neutral on issues like the Schengen agreement;\textsuperscript{76} furthermore, the Dutch presidency, which led the IGC’s concluding sessions, attempted to include its personal agenda of reweighting votes in the Council of Ministers in order to benefit its own country.\textsuperscript{77} Much like the previous Maastricht Treaty, the Treaty of Amsterdam failed to wrap up discussions on certain institutional issues, postponing negotiations and essentially “freezing” talks on Union structure, voting and defence until the EU was approximately one year from enlargement.\textsuperscript{78} The ratification process for the Treaty of Amsterdam was less problematic, possibly due to fewer referenda; the majority of member states used parliamentary procedures to approve the treaty, while only Denmark and Ireland held national referendums. Portugal initially scheduled a referendum but later cancelled in favour of parliamentary ratification. Thus, while the EU may have had an easier time passing the Treaty of Amsterdam, it still did not successfully improve upon the IGC structure or on the effectiveness of legislation created during an IGC.

\textsuperscript{76} The Schengen Agreement, signed in 1985 and incorporated into EU law via the Treaty of Amsterdam in 1997, eliminates a significant number of border controls between participating countries and also fosters cooperation and coordination of border policies and border policing. The Schengen Area includes 25 European countries and two cooperating members. Full members include mainly EU countries, although Iceland and Norway also participate. Ireland and the United Kingdom are only cooperating members, as they prefer to maintain national control over border issues, illustrating one of the many “opt-outs” that EU members often insist upon including in treaties and other agreements.

\textsuperscript{77} Dür, A. and G. Mateo.

\textsuperscript{78} Dür, A. and G. Mateo.
**Treaty of Nice**

The IGCs resulting in the Amsterdam and Nice Treaties were both called “false starts” on forging a European Constitution, but the Nice IGC has been considered the most inefficient and poorly run conference in the recent history of the EU. Although member states signed the Treaty of Nice on February 26, 2001, not all participants were content with the process, and the rocky ratification suggests that the IGC was not organised and managed in a manner conducive to creating meaningful legislation. With the pending enlargement of the EU, the Treaty of Nice proposed to limit the size of the Commission and to reweight votes within the institution’s voting procedures. It also attempted to tackle the issue of increased cooperation between member states, something that initially been slated for debate at previous meetings. The topics discussed at Nice were termed “leftovers” from the 1997 conference in Amsterdam, and delegates complained that because the conference focused on unpopular and previously tabled issues, the Nice summit was not ambitious or motivated enough to address the multitude of other concerns facing member and accession states. The summit in Nice attempted to restructure the EU to avoid gridlock and to establish effective decision-making procedures, as elites recognized that the then current methods were too cumbersome to enact any significant changes. However, while the Nice IGC supported the use of “enhanced cooperation,” which intended to make decision-making processes more effective and timely but instead, elites shied away from using this method, as it was viewed as overly complicated. As a result, delegates were admitting that although

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79 Norman, P. 319.  
80 Norman, P. 11.  
81 Norman, P. 11.  
82 Norman, P. 80.  

Enhanced cooperation, meant to be used only as a last resort, is a method of overcoming gridlock by permitting certain member states (at least one-third of EU countries) to work together on topics of mutual interest. As a result, countries can proceed at various speeds towards similar but not necessarily the same goals. Member states utilising enhanced cooperation must adhere to EU rules and framework and cannot extend or create powers. Member states must request the use of enhanced cooperation and receive approval from the Commission.
decision-making procedures were too cumbersome, the process to change these methods was also too problematic, creating a non-productive cycle.

The Treaty of Nice ran into obstacles both during the drafting process and the document’s ratification, not surprisingly, as the IGC followed similar procedures as previous conferences. Presidential bias was not as blatant during the summit, but each rotating presidency brought its own faults to the table. The Finnish presidency was initially in charge of drafting the report that would help guide the IGC, and yet it simply published a list of important issues to address during the conference, suggesting that it produced an inefficient and uninspiring document, incapable of providing the necessary direction for purposeful negotiations. The following Portuguese presidency skirted other controversial issues, as it hoped to postpone final decisions on voting in the Council of Ministers and on the structure of the European Commission. France fared no better, also delaying negotiations on the same areas of concern, and the French presidency also failed to adequately mediate conflicts between attendees. The summit in Nice has been described as “bad-tempered,” and threats came from all actors, including the European Parliament and national parliaments, with the EP suggesting a resolution against the Treaty of Nice and member states threatening rejection during the ratification process if proposals for institutional reform were ignored. Eventually, the EP did pass the Treaty, in spite of the lack of attention given to its recommendations for new EU powers and structural modifications, but this acceptance did not guaranteed full ratification from EU members. Though only one member state, Ireland, held a national referendum on the Treaty of Nice, public distrust and dissatisfaction with the text was reflected in the polls, as the Irish public rejected the Treaty of Nice in 2001. A second referendum was held a year later and passed after the Irish secured their

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83 Dür, A. and G. Mateo.
84 Norman, P. 108.
neutrality with the Seville Declaration and other measures were taken to ensure more communication and oversight between Irish representatives and the European Union.  

Issues supposedly closed by the end of the Nice IGC reappeared at the Constitutional Convention, and these unsettled results of the meeting indicate that EU conferences have difficulties in reaching conclusions and in producing effective legislation. In fact, participants included a declaration at the end of the Treaty of Nice, stating that specific topics, such as the delimitation of powers, the legal status of the Charter on Fundamental Rights, treaty simplification, and EU decision-making processes, should be addressed at a later IGC, similar to what happened at the end of the Maastricht meeting. Changes between the various treaties, separated by only a few years, also imply that agreements reached at the respective conferences and conventions were less than permanent, and the rate at which decisions were changed or altered suggests that the EU treaties lack stability and continuity. For example, the Treaty of Nice refused to include any further integration on defence issues, and yet the delegates at the Convention on the Future of Europe were in near unanimity on exploring a united security policy. Thus, with the multitude of conflicting opinions and complicated conference procedures, the conclusions reached in Nice were termed “messy compromises,” and participants seemed to agree that they could “not do business like [Nice] in the future.”

A Change to the ‘Convention Method’

This discussion of problematic IGCs suggests that the EU has not had positive experiences during the treaty-making enterprise and suggests that the institution often chooses

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86 Norman, P. 117.
87 Dür, A. and G. Mateo.
88 Norman, P. 204.
89 Norman, P. 15-16.
poor procedures to accomplish any legislation-related tasks. The aims of the IGCs typically exceeded what participants were capable of accomplishing, and the structure of these meetings did not provide an adequate forum for delegates to effectively debate European and national concerns. The conflicts arising from presidential preferences, unresolved issues from earlier conferences and difficult ratification procedures highlight the need for a better method of institutional deliberation and decision-making. After this series of less-than-ideal conferences, EU officials decided to reassess and redesign the procedures for large-scale meetings and debates, eventually developing the “convention method” for the Convention on the Charter of Fundamental Rights. However, overall success of the Charter on Fundamental Rights did not guarantee the same result for the European Constitution.

Convention on the Charter of Fundamental Rights

Begun in 1999, the Convention on the Charter of Fundamental Rights followed a structure that allowed members from national parliaments, the European Parliament, the Commission, other elites and also the European public to engage in more open and cross-organisational discussion, unlike the formal and more traditional methods used by IGCs, such as the three-tiered decision making procedure that had previously prevented increased communication between EU officials. Consequently, this new convention method had many advantages over prior conference formats. For instance, diversity was a key factor in gaining input from a wide range of politicians, experts, and average citizens, and this mixture of participants contributed to more lively and engaging deliberations. Even little administrative issues during the Convention offered welcomed changes from the past IGCs. For example, during the IGCs, representatives from different EU and national bodies tended to only associate

with their direct counterparts, whereas the convention method simply arranged participants in alphabetical order, creating more opportunities for interaction and establishing an environment where all viewpoints could be heard. In addition, the delegates at the Convention more closely and accurately represented European society than the earlier IGCs, particularly since the Convention made efforts to include members of civic groups and NGOs. Members of the public were also welcome to attend Convention meetings, something unheard of during IGC meetings, and public attendees could often sit just behind official Convention members during many of the Charter’s debates.\textsuperscript{91}

Another positive change was the specificity associated with the Convention’s purpose. The mandate for the Convention was much more explicit than any agenda set for prior IGCs. During the initial meeting for the Charter’s Convention, Chairman Roman Herzog outlined a detailed list of tasks to accomplish during the meetings. Though detailed, Herzog chose to focus the Convention’s efforts on the single task of creating a “catalogue” of fundamental rights, and he did not attempt to tackle other items of concern, making the agenda focused and manageable for both the time constraints and the overall goal of the Convention.\textsuperscript{92} In addition, a main difference between the convention method and the IGCs was the emphasis on consensus rather than veto power during the Charter’s negotiations. The convention method was more favourable to coalitions and bargains that prevented the Charter from having to settle with the lowest common denominator.\textsuperscript{93} Gridlock was avoided, and the Convention successful drafted the Charter on Fundamental Rights over the relatively short period of about one year; consequently,

\textsuperscript{91} Deloche-Gaudez, F.
\textsuperscript{92} Deloche-Gaudez, F.
\textsuperscript{93} Regarding the political nature of the EU, a decision made according to the lowest common denominator would refer to the most basic form of an agreement, stripping a piece of legislation or resolution down to the bare minimum in order to gain approval of all member states. These types of agreements are often considered superficial or unproductive because they lack specific information and have little power to enact change.
the convention method was quickly adopted by the European Commission, the European Parliament and the European Council, giving credibility and support for this new framework.  

*Convention on the Future of Europe*

Following the Laeken Declaration, politicians in the European Union decided to host a convention regarding a European Constitution and to discuss the future of Europe, basing their decision to hold this style of conference upon the success of the earlier Convention on the Charter of Fundamental Rights. Some elites felt that the IGCs were not conducive to drafting a constitution, citing frustrations with the less-than-successful outcomes of the Nice IGC in 2000, and they saw a convention format as the solution to avoid “undignified late-night horse-tradings between governments;” furthermore, many asserted that the convention method would enhance the legitimacy and approval of the EU and its legislation. When comparing the problems associated with IGCs and the mainly successful outcomes of the Convention on the Charter of Fundamental Rights, it would appear to have been a wise decision to opt for a convention in order to draft a European Constitution. There were many similarities between the Convention on the Charter of Fundamental Rights and the Convention on the Future of Europe. Both had participants from the EP, the Commission, as well as representatives of the heads of state and government of member states and representatives of the national parliaments, ensuring a diverse range of opinions and expertise. Each convention had a main chairperson or president to oversee the entire process, and both had a praesidium, or small body of convention members that had the final say on issues and draft text. Additionally, observers and the public also participated in the conventions’ discussions. However, while there were numerous advantages to the convention

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94 Deloche-Gaudez, F.
95 Norman, P. 21.
method, as explained earlier, the constitutional process was much more complex than that for creating the Charter, and the Convention on the Future of Europe had to address a far greater number of concerns. To make matters even more complicated, the Convention on the Future of Europe was much larger than the Convention on the Charter of Fundamental Rights, due to the inclusion of the candidate countries, increasing the likelihood for conflict and dissention between countries.97

The total membership of the Convention on the Future of Europe consisted of 207 individuals: 102 full members, 102 substitutes, one president, and two vice-presidents. In addition, there were 13 observers from the Committee of the Regions, the Economics and Social Committee and the European Ombudsman.98 Out of the 102 full members, 30 came from national parliaments, 16 from the European Parliament, two representatives from the European Commission, 15 heads of state or government from full member states, 13 heads of state or government from the accession countries, and 26 representatives from the accession national parliaments. Once a month, the Convention met at the European Parliament in Brussels for plenary sessions on one or two main constitutional topics. These plenary sessions were open to the public, although research illustrates that having an “open door” did not necessarily create a more informed citizenry. In order to discuss particular issues more in-depth, members of the Convention split up into working groups, and while some of these sessions were closed, summaries were published at the end of each meeting, regardless of the individual working

97 The Convention on the Charter of Fundamental Rights only involved 15 EU member states, whereas the Convention on the Future of Europe also allowed the 13 candidate countries to participate, adding more than 50 extra participants to the meetings.
group’s policy on public admittance. Additionally, there were three closed discussion circles on the Court of Justice, the budgetary procedure, and own resources. However, the plenary sessions, working groups, and discussion circles were guided by the Praesidium, a group of 12 members and one invitee that gave direction to the Convention and determined the most relevant issues to be debated. Members of the Praesidium included the Convention President, the two vice-presidents, two representatives of the members of the European Parliament, two representatives of the Commission, two national parliament representatives, representatives of the Spanish, Danish and Greek governments, and a representative from the Slovene Parliament. Thus, there was a significant percentage of constitutional discussion to which only a select few possessed power and influence.

Regarding the structure of the constitutional process, the Convention on the Future of Europe was divided into three phases: listening, study, and drafting. The timeline was arranged as such in order to provide for participants to conduct adequate research on European-wide issues and gather data and opinions from their respective populations. The initial listening phase allowed many national representatives to familiarise themselves with the EU technical terminology and the format of EU decision-making, but although this period was beneficial for some convention members, others more experienced with EU procedures quickly became impatient. While national parliament members recalled being under-informed about the political environment in Brussels and expressed the beneficial value of a slower paced opening to

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99 There were 11 working groups in total: Subsidiarity; Charter/European Convention on Human Rights; Legal Personality; National Parliaments; Complementary Competencies; Economic Governance; External Action; Defense; Simplification; Freedom, Security and Justice; and Social Europe.

100 The term praeidium comes from the Latin meaning “protection” or “defense.” It is used to describe a tribunal or leading body, direction other legislative institutions.

101 Spain, Denmark, and Greece all held the presidency of the EU during the Convention and were thus specifically represented in the Praesidium. Mr. Alojz Peterle from Slovenia was invited to represent the candidate countries, although he was not considered a full Praesidium member.

102 Norman, P. 40.
the Convention, MEPs, who were already familiar with EU procedures and terminology, disliked the listening phase of the Convention, feeling like this period was an unproductive use of their time. Concerns arose regarding the length of the listening phase, as delegates feared that without a definitive agenda and direction, this step would prevent the Convention from making any real gains towards a Constitution, but while Maria Berger, an MEP from Austria, collected almost twenty signatures for her petition to cut short the listening phase, the Praesidium took no notice of these demands, setting the Convention off to a somewhat tumultuous start. 103

When the Convention finally did begin to draft articles for the European Constitution, the Praesidium appeared to want to follow in the Charter’s footsteps, attempting to get a large portion of legislation passed in a relatively short amount of time. Unfortunately, the Praesidium’s method of choice did not always further this goal. The Praesidium imposed rigid timelines for proposals, usually giving participants only a week or 10 days to suggest any amendments to the text. As a result, delegates had less time to consult with subject matter experts and other outsiders on specific constitutional issues; in addition, members with larger staffs and more resources had advantages over those with less logistical support. This process for submitting amendments highlighted the inequalities among the different conventionnels, and possibly created an atmosphere of frustration, as participants might not have felt as though they were given enough time and resources to accurately and fully express their opinions. 104 The set-up of the drafting process created additional tension between the Praesidium and other Convention members, for the Praesidium had total control over what working groups would be created and what tasks would be assigned. The overall sentiment on working groups was that they were a

103 Castiglione, D., J. Schonlau, et al. 103.

Conventionnels was a term used by EU officials to describe the official participants at the Convention on the Future of Europe.
success in allowing elites to discuss issues on a deeper level and in creating an atmosphere conducive to lively debate that otherwise would have been impossible during the Convention’s plenary sessions; nonetheless, there was some discontent over the high degree of influence and power held by just a few Convention participants in the Praesidium who oversaw the groups.\textsuperscript{105} Some national parliament members at the Convention submitted proposals to change this system, but Giscard remained firm in keeping a tight rein on the Convention, though he did agree to explain the group-creation and task-assignment processes in more detail.\textsuperscript{106}

Towards the end of the Convention, when the draft or portions of the Constitution were near completion, the procedural aspects of voting came under scrutiny. During negotiations, decisions were determined via consensus, rather than by majority vote or unanimity, in hopes of preventing conflict that could have resulted from legislation created by a bare majority and in an effort to prevent a situation of tyranny of the minority and gridlock if all members had to agree unanimously.\textsuperscript{107} At the earlier Convention on the Charter of Fundamental Rights, voting was not used either, with organisers also preferring to draft the document via consensus. In fact, during the Charter’s Convention, the only attempt at conducting an official vote during a plenary session resulted in uproar and nearly broke down the meeting. However, Giscard’s use of precedence for justification of the “no-voting” policies for the Convention on the Future of Europe did not satisfy all participants. Some representatives claimed that Giscard, who earlier stated that “it would be impossible to consider the votes of \textit{conventionnels} to be equal,” was forbidding the use of democratic instruments and detracting from the Convention’s legitimacy.\textsuperscript{108}

Additionally, while most Convention members agreed that consensus was the most practical

\textsuperscript{105} Castiglione, D., J. Schonlau, et al. 100.
\textsuperscript{106} Castiglione, D., J. Schonlau, et al. 100.
\textsuperscript{108} Castiglione, D., J. Schonlau, et al. 95.
method for discussing the European Constitution, it was difficult for participants to define the term “consensus.” President Giscard intimated that majority rule may be used, and he also asserted that participants from candidate countries would not have a “vote” either in consensus-making or actual voting procedures, causing upset between full EU members and the accession states. Although many of the working groups came to internal consensuses, it was ultimately within the Praesidium’s power to combine agreements into a final draft. Looking at the significantly larger role given to the Praesidium as a result of the Convention’s structure, it is conceivable that non-Praesidium participants felt slighted or not fully involved in the process, adding additional tension and frustration to the already difficult task of creating a European Constitution.

As history has shown, the EU has not always organised its conferences in the most efficient manner, resulting in several public votes of disapproval, and the problematic drafting and ratification processes suggest that the institution is poorly designed for creating and passing such a monumental piece of legislation like a constitution. Although significant procedural improvements were made via the convention method, perhaps the task of writing a constitution was too large for even this new form of discussion. Unlike the Convention on the Charter of Fundamental Rights, the Convention on the Future of Europe attempted to tackle dozens of policies at once and gave delegates a rather short timeframe in which to complete this monumental task. Concerns regarding the equality of representation and involvement of participants in the debates and drafting process added to the Constitution’s list of difficulties. The convention method holds great potential for more efficient decision-making and deliberating, but it has proven successful when discussing only one item at a time and in situations where all official participants had both a voice and a vote.

Methods of Ratification

Ratification is a symbol of deliberative democracy, an instrument that could be seen as increasing the legitimacy of the European Constitution; however, the EU did not, and perhaps, given the insistence of member states to retain control over many political processes, could not, establish a standard method of ratification for the Constitution or other legislation.\textsuperscript{110} Although less than half of the member states were fully committed to a public referendum on the Constitution, the number of states holding such votes was much higher than the EU had seen for any other treaty. The Czech Republic, Denmark, France, Ireland, Luxembourg, the Netherlands, Poland, Portugal, and Spain had all planned on conducting referendums, and the United Kingdom also considered this process. The greater number of national referenda did not bode well for a successful ratification process, for while recent EU legislation had never been fully rejected by a national parliament, it had twice been voted down by national populations and the EU had to call for secondary referendums. Nonetheless, elites had their reasons for choosing public referendums for constitutional ratification. Referenda can stimulate debate on integration issues, gauge public tolerance and desire for increased integration and can improve the legitimacy of the EU integration and governing processes.\textsuperscript{111} Additionally, many constituents demanded to have their voices heard and votes counted on this historic issue, and in Ireland, international agreements of this scale were required to have public referenda.

Yet, on the other hand, this ratification method, which would seem to increase the democratic nature of the Constitution, actually hindered the process of passing a document that

\textsuperscript{110} Christiansen, T. and C. Reh. 224.
The concept of deliberative democracy believes that policy is best created when decision-makers actively and frequently consult with the general public. Citizen involvement gives the processes and the institutions legitimacy and also fosters respect and equality amongst participants, as people from all levels debate and discuss issues of political concern to arrive at mutually agreeable conclusions.

\textsuperscript{111} Christiansen, T. and C. Reh. 204-205.
would make instrumental democratic changes to the way in which the institution is run. There was no single, simple procedure for holding a national referendum. The dates for referenda and timelines for ratification varied from country to country, and while a strategy for coordinating European ratification processes was considered, no official policy was adopted. Some members at the European Convention advocated for a single, one-day European referendum to simplify the ratification procedure, but the nature of the Constitution did not allow for such a vote in unison.\(^{112}\) Referendums were indeed a risky and unreliable choice, with rules differing from state to state. In Poland, at least 50% of the public had to cast their ballot in order for the referendum to be considered valid, and after an unexpectedly poor showing in Spain, where pro-EU sentiment was much higher than in Poland, the Poles feared that the referendum would turn into a long, drawn-out process, as they would have had to repeat the vote as many times as necessarily to achieve a 50% turnout. In addition, the EU has not always had positive experiences with public referenda, with both Denmark and Ireland previously rejecting other key EU decisions.\(^{113}\) Other complications associated with public referenda include the impact of economic and social conditions upon citizens’ voting preferences. The EU has a history of successful ratification of treaties during times of financial success, such as during the 1980s and the passage of the Single European Act, as well as a trend of failures that coincided with recessions and political turmoil. In addition, local and national politics can inadvertently affect the outcome of a referendum, and the public will use EU issues as “proxy votes” on the

\(^{112}\) Since the EU Constitution was a combination of past treaties and new amendments, rather than a completely new document, it was governed by Articles 48 and 52 of the Treaty of the European Union, which require member states to ratify amendments first before they can make any new changes to ratification procedures.

\(^{113}\) Norman, P. 309.

See the Maastricht Treaty and Treaty of Nice for EU legislation that initially failed via public referendum.
incumbent government. Consequently, these disadvantages decreased the possibility of a successful constitutional ratification process.

The Constitution’s ratification got off to a fairly positive start, with Spain’s referendum giving the document a 76% approval at the polls in February 2005. The parliaments of Hungary, Italy, Lithuania, and Slovenia had already ratified the text. As a result, elites had little cause to suspect the trouble looming ahead, and they were very much surprised when both France and the Netherlands rejected the Constitution within just days of each other, voting it down with respectively 54.8% and 61.6% of electors saying “no.” The public response in these two founding member states practically halted the passage of the Constitution, for while several countries did continue with their voting procedures, many referendums and parliamentary ratifications were postponed indefinitely. One of the main concerns with the ratification process for this particular document was that when a country rejected the Constitution, not only did it reject new reforms and policies, it also effectively said “no” to pre-existing legislation and laws that had already be approved and enacted, calling into question the legitimacy of already established treaties. Previously, when the EU encountered difficulties with treaty ratification, it merely meant a delay in the process, not a complete stop. When the Danish first rejected the Maastricht Treaty and the Irish voted “no” to the Treaty of Nice, the referendums were simply repeated until the EU got the results it wanted. However, this pattern failed to extend to the Constitution’s ratification, and the very public defeat of the Constitution may encourage EU

\[114\] Christiansen, T. and C. Reh. 226.

\[115\] France held their national referendum on May 29, 2005, the Netherlands on June 1, 2005. France had approximately 70% voter turnout, and around 63% of Dutch voters cast their ballots. It should also be noted that this ‘no’ vote on the Constitution was the first national referendum held in the Netherlands, harkening back to problems associated with Denmark’s first experimentation with referenda in 1992 with the Maastricht Treaty.

\[116\] Cyprus, Latvia, and Luxembourg all voted in favour of the Constitution after the French and Dutch rejections, but the Czech Republic, Denmark, Ireland, Poland, Portugal, Sweden, and the United Kingdom cancelled their voting plans.

\[117\] Christiansen, T. and C. Reh. 226.
officials to create new methods for decision and legislation-making that would bypass the need to consult the public via referendum, although any such new procedures may also result in backlash from European citizens who would not look favourably upon EU decisions made without public consultation. While it is impossible to know if all of the Constitution’s articles would have been ratified in a piecemeal fashion or if agreements would have been more easily reached if all delegates felt equal, the rejection of the document indicates that still more changes in how the EU conducts its conferences are necessary before any future attempts are made to produce a constitution for Europe.

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V. Hypothesis II: Elite – Public Interactions and Public Perception

Although the majority of European countries hold a favourable opinion of the European Union, a sense of secrecy and elitism detracts from the general support and good will towards the institution. Many citizens have only superficial knowledge of the EU and how it operates, creating distrust and suspicion about the motives of EU officials; moreover, the failures of the French and Dutch referendums suggest that the EU will no longer be able to operate solely upon the preferences and negotiations of political elites, as more member state populations begin to demand nation-wide votes on EU decisions. Overall support for the constitutional project in Europe led many EU officials to believe that ratification, while never an easy process, would not pose a barrier to the creation of a constitution for Europe. However, evidence suggests that elites underestimated the public’s desire for better communication and for more frequent and meaningful public consultations. This section will analyse the various opinions held by the public on key EU and constitutional issues, evaluate the extent to which EU officials responded to citizen calls for increased involvement in and influence on the institution’s affairs and will also examine the representation at the Convention of the Future of Europe, as disproportionate representation would generate distrust in the Convention and aversion to any legislation it created.\(^{119}\) Had the EU been in more constant contact with citizens and better represented the

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\(^{119}\) Much of the public opinion data will come from Eurobarometer reports. The Eurobarometer, part of the Public Opinion Analysis sector of the European Commission, issues a wide range of reports and survey results on numerous EU issues. Standard Eurobarometers consist of roughly 1000 in person interviews with citizens above the age of 15 from each member state, although the number of interviewees can vary depending on the size of the country; 1500 persons are interviewed in Germany, 1300 from the United Kingdom (including 300 from Northern Ireland), and only 600 in Luxembourg. Interviews and surveys are conducted by national entities in connection with the European Opinion Research Group. All institutes performing Eurobarometer studies must comply with the standards of the European Society for Opinion and Market Research. Data for standard Eurobarometers is collected two to five times per year, and these standard survey results are published twice per year. For more rapid collection of information, the Commission authorizes Flash Eurobarometers, which are thematical telephone interviews conducted for a specific purpose and issue considered of extremely high importance to the EU. Flash Eurobarometers are not scheduled on a regular basis.
people and interests of Europe, perhaps the Constitution would have been received in a more positive and ultimately more successful manner.

**Public Opinion Data**

When EU officials issued the Laeken Declaration in 2001, leaders were under the impression that the general public was mostly supportive of their endeavours, possibly causing them to operate under the false pretence that they could continue their activities in an insulated fashion without much consultation with EU citizens. An official Europa press release from December 2001 quoted Eurobarometer surveys that reported an increase in trust in EU entities and a more positive view of the European Commission, and this information further supported elites’ belief that they could continue business as normal. Between 2001 and 2002, public support for a European constitution rose five percentage points, raising the approval level to 67% of EU citizens. Over half of respondents thought that EU membership was a benefit, and they generally supported EU integration and harmonisation policies prior to the Convention on the Future of Europe. Nevertheless, after the Convention, citizens had very little knowledge of what exactly occurred in Brussels during those 16 months of drafting and deliberation. The *Flash Eurobarometer 142: Convention on the Future of Europe*, conducted from June 23, 2003 to August 1, 2003, was launched immediately following the publication of the Convention’s final work on June 19, 2003 in Thessaloniki, Greece. This survey discovered that 55% of those interviewed had never heard of the Convention on the Future of Europe, and of those citizens that had, more than half were not exactly sure what the Convention was doing, what its purpose

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was, or what it was drafting. Although 68% did agree with the notion of having a Constitution for Europe, half of the respondents were unsure how they felt about the results of the Convention and could not say if they were satisfied or dissatisfied with the final product; in addition, 40% admitted that they would not bother to read the draft. In 2004, only 6% of Eurobarometer respondents believed that they had a good grasp of the content of the EU Constitution, contrasting with the 50% who admitted to knowing “nothing at all,” and other surveys reflect similar combinations of approval for the EU coupled with low levels of knowledge or interest in EU legislation and politics.

Do you consider yourself as being well informed on questions relating to the draft of the future European Constitution?

[Bar chart showing percentage of respondents who consider themselves well informed about the EU Constitution.]

There was a 5% increase from 25% to 30% in the number of respondents who felt “well informed” about the EU Constitution. However, even with this increase, those who considered themselves “well informed” were

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Between June and October 2003, there was a 6% decrease from 45% having knowledge of the Convention to only 39% having heard of the meeting.

Between June and October 2003, there was a 3% drop (32% to 29%) in the number of respondents knowing the correct task of the Convention on the Future of Europe - creating a draft constitutional treaty.
A fair amount of uncertainty surrounds the EU’s activities, as citizens generally do not understand the inner workings of individual bodies within the EU, such as the Council of Ministers, and this lack of knowledge decreases trust in and support for any movements championed by these institutions. During the lead-up to national referenda, confidence in EU institutions decreased steadily; as the Convention and the IGC progressed between 2002 and 2003, trust levels dropped an average of six percentage points. Over half of those persons interviewed also confessed to not understanding how the EU functions in general, and almost 70% expressed their desire for more information about the institution. In 2005, the year of both the French and Dutch rejections of the EU Constitution, almost 60% of EU citizens believed that their voice did not matter in EU decision-making, and almost 75% of survey respondents did not feel involved in European-wide affairs, illustrating a disconnect between officials in Brussels and the ordinary citizen. These results could reflect public unease with the lack of information about the EU and its activities, as trust levels were higher among those citizens who felt as though they knew a good amount of information about the institution, and the Constitution’s rejection may have been one vehicle for expressing this discontent.

However, prior to the start of national ratification, a Eurobarometer survey showed 49% of EU citizens were in favour of the EU Constitution, as compared to only 16% against, and overall support for the Constitution was high, suggesting an easy, or at least less difficult, ratification process; consequently, the French and Dutch rejection came as a surprise to EU officials, especially since the two countries had some of the greatest support for the document. In

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The President, Ms Wallstrom, et al. (2005). Communication to the Commission from the President, Ms Wallstrom, Mr Kallas, Ms Hubner and Ms Fischer Boel, Proposing the Launch of a European Transparency Initiative. Brussels.
fact, 63% of the Dutch population was reported by Eurobarometer to have supported the Constitution.\textsuperscript{126} Other survey results also showed a rise in constitutional support, with approval increasing to 77\% in the 25 member states in 2004 from 67\% in the months prior to the IGC in October 2003, and all of this data would point towards a positive public reception of the European Constitution.\textsuperscript{127} However, the Eurobarometer acknowledged that approximately one-third of citizens were “neither for nor against” the Constitution, and as a result, the majority support reported in the survey did not guarantee a “yes” vote at the time of national referendums. Even if citizens wanted EU treaties consolidated into a single Constitution, a Eurobarometer survey did indicate that if knowledge levels were low, those citizens were significantly less likely to vote “yes” for the Constitution.\textsuperscript{128} While public surveys can be a good indicator of support, EU officials may put too much stock in these responses, believing that if the Eurobarometer indicated overall support, improving communication between the institution and the general population was not a priority. This over-confidence in the public opinion surveys resulted in a much more difficult ratification process, as elites failed to see the importance of allowing more active public participation and neglected to increase the availability and dissemination of information regarding the Constitution’s content and benefits for European citizens.

\textbf{Public Participation}

The Convention on the Future of Europe was mainly a self-contained meeting, with mostly appointed members, and Convention participants had control over the direction of the

debates. Similarly, like at an IGC, the European Council set the Convention agenda, as well as makes the final decisions. Unfortunately for those citizens most concerned with public input and consultation, these meetings are not well suited for interaction with civil society. While this tight-knit and exclusive arrangement helped limit the influence of lobbyists, the ordinary citizen was also restricted from expressing his or her opinion.\textsuperscript{129} There was, understandably, a need to somewhat insulate the Convention from the rest of society, for when sessions were open to the public, there emerged “a veritable ‘cottage industry’ of expressions of opinion, lobbying documents, and attempts to exert pressure from national and transnational private actors to be heard in the conference room.”\textsuperscript{130} However, this process did not allow for the most wide-spread public debate on any treaty changes and provided fewer opportunities for popular discussion.\textsuperscript{131}

Some citizens assert that because the process was largely devoid of public input, the Constitution should be put to popular referendum rather than parliamentary ratification, as they believed that direct voting was the best and possibly only method of expressing their opinion within the institution’s current framework.

The public, on average, does want to be involved in EU decision-making, though participation is not always made easy. Throughout the year, the EU will hold public consultations, which consist of both online and in-person interaction between citizens, business, government, and other organisations. Each public consultation will have email contacts for interested parties to submit their contributions and opinions on the consultation’s topic. The EU Commission also hosts various conferences and roundtables for citizens, businesses, and public

\textsuperscript{129} Christiansen, T. and C. Reh. 171.
authorities to meet, discuss, and attend workshops regarding the issue in question. However, over the course of the Convention on the Future of Europe and the 2003 IGC, the public consultations did not touch upon the issue of a European Constitution at all, focusing instead upon topics such as cybersquatting and draft chemical legislation. Between December 30, 2001 and June 4, 2004, the Commission held 22 consultations, and participation in these events ranged dramatically, from a mere 67-person audience to over 1000 participants, depending upon the consultation’s agenda.\textsuperscript{132} A trend across attendee feedback was that the information provided was too general or not relevant. Language barriers were also noted on some questionnaires, and there were instances where more than half of the participants reported that their needs “were not met.”

\begin{center}
\textbf{It would be … that all citizens of the European Union give their opinion, by referendum, on the draft Constitution?}
\end{center}

\begin{center}
\includegraphics[width=0.5\textwidth]{chart.png}
\end{center}


\textsuperscript{132} Data from the public consultations collected from the Commission’s website at http://ec.europa.eu/yourvoice/consultations/index_en.htm. While the majority of respondent data was available online, some reports were inaccessible.
Although the idea of national referendums was initially a success, with the Spanish ratification of the draft Constitution in 2005, EU officials should have realised that this vote was still fraught with difficulties. Only 42% of eligible Spanish voters went to the polls, and in spite of a prominent pro-Constitution campaign, many Spanish citizens felt too ignorant of the Constitution’s contents to make an informed decision. Unfortunately, elites' apparent unwillingness to tackle the failure of communication between the EU and the rest of Europe enhanced the general public’s apathetic or negative view of the institution. The EU has experienced a downward trend in voting during EU elections, with turnout decreasing from 56.8% to 47.1% between 1994 and 2004, but other options still exist to help encourage public participation, such as petitions, citizen consultations, interest groups, policy networks, and other political events and debates. As for suggestions on how the EU could best increase the flow of information, the Eurobarometer survey reported that citizens would like more EU coverage on national television, as people tend to find this mode of communication to be most effective. Without clear communication between EU representatives and the people whom they are supposed to be representing, citizens may feel as though they are merely recipients of EU policies rather than active participants in EU affairs, and this situation can decrease trust in the institution and calls into question the legitimacy of EU legislation. European populations lacked confidence in the Constitution and doubted how well their needs were addressed during the Convention on the Future of Europe; consequently, this wariness concerning the Constitution contributed to the document’s eventual failure.

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134 Longo, M. 197.
In June 2002, the Convention on the Future of Europe attempted to reach out to the public by hosting a two-day hearing with “civil society;” unfortunately, this meeting was deemed a “gallant failure,” and delegates failed to connect with their European constituents. A special Youth Convention was held one month later, a symbol of the Convention’s willingness to consult the younger generations, despite Giscard’s age and the age of the majority of the Convention’s attendees, but Eurosceptics, nonetheless, found numerous faults with this convention, calling it “unrepresentative, undemocratic and too concerned with vested interest and political factions.” This sentiment of disappointment with the Youth Convention was echoed by Austrian Convention member, Johannes Voggenhuber, who lamented that it was “not the European youth that [came] to Brussels, but the future bureaucrats of the EU institutions.”

Even though some efforts were made to incorporate popular opinion within the text of Convention documents, there was a noticeable lack of reference to civil society and how, if in any way, the public influenced the agenda or issues discussed by Convention members. Additionally, when commenting on several initial drafts of the Constitution, officials conceded that they did not actually utilise the results and comments from the working group on “Social Europe,” and as a result, feedback from public forums revealed dissatisfaction with the process, eliciting responses like “We were very disappointed to see that the Social Europe report was to a very limited extent taken into account.” In addition to being called a “farce,” the consultation process failed on several logistical points, like not having enough physical space for all of the participants and giving inadequate time for organisations to voice their concerns; consequently,

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136 Norman, P. 41.
The term “gallant failure” was used by a Convention member, who upon recalling the civil society “meeting,” confessed that the gathering had been more for the benefit of Brussels-based lobbyists and failed to reach out to the ordinary EU citizen.

137 Norman, P. 41- 42.


139 Castiglione, D., J. Schonlau, et al. 158.
citizens questioned whether their debates had any substantive effect on the constitutional process.\footnote{Castiglione, D., J. Schonlau, et al. 163-164.}

It was noted that unless specific Convention participants reached out directly to their constituents, there was little personal contact between the Convention as a whole and the EU public, and this evidence, coupled with the significant lack of popular knowledge about Convention activities, suggests that communication between EU elites and the ordinary citizen was insufficient and had adverse effects on the drafting and ratification processes of the EU Constitution. In order for the constitutional process to effectively incorporate public sentiment:

\begin{quote}
a public discourse about the adequacy, or inadequacy, of existing institutional arrangements can be a process of civic education through which European citizens develop an understanding of what constitutes a good society and system of governance, i.e. the legitimate constitutional principles of authority, power and accountability, and the normative-ethical basis, and commitments and beliefs, of the polity.\footnote{Longo, M. 168.}
\end{quote}

Unfortunately, the EU did not create an environment conducive to productive negotiations and deliberations between elites and the people, and without an effective plan for communication and participation, EU officials could hardly have expected to have had the public’s full support when attempting to make sweeping institutional changes. EU citizens need to go to the polls with confidence in the EU, trust that their voice was and will be heard, and a sufficient understanding of the issues and legislation for which they are casting their ballots. The process of drafting the EU Constitution failed to provide citizens with such sentiments and did not make the public feel part of the constitutional debate, resulting in apprehension and trepidation concerning the document’s ratification.

\footnote{Castiglione, D., J. Schonlau, et al. 163-164.}
\footnote{Longo, M. 168.}
Communications Complications

When reflecting upon the constitution-making process, additional weaknesses in communication appear to have affected the outcome of the Convention and the Constitution’s subsequent ratification and rejection. Information was often given to the public in fragments, making any reports or press releases difficult to comprehend, and due to poor planning and coordination of media events, communication was inefficient. The disjointed news bites were complicated further by technical political jargon, as EU elites did not explain the benefits of the Constitution in a clear and direct fashion; as a result, citizens failed to understand the effects that the Constitution would have on their daily lives, and the uncertainty surrounding the Constitution’s consequences led to increased suspicion and wariness of the document. Moreover, members of the European Commission focused more on their own agendas rather than the needs and interests of their constituents. Campaign financing took priority over adequate communication, and the public was left without sufficient knowledge of the draft Constitution or even the institution as a whole. 142 Although a March 27, 2002 open letter from the European Convention to the editors of major newspapers in member states and candidate countries promised increased public involvement via the Convention Website and Convention Forum, there were still significant shortcomings in communication between convention members and EU citizens. 143 The Plenary sessions of the European Convention were indeed open to the public, but during the entire two-year-long meeting, the Convention’s website offered only five press


releases, suggesting a lack of dedication to improve information-sharing between EU officials and the media.

Most reports place national governments at fault for never investing in effective strategies for communicating the benefits of EU membership and of a European Constitution. However, governments cannot always be blamed for public ignorance on EU issues. For instance, the British public has repeatedly complained that there is too much coverage of EU politics, and national newscasters adjust their content to suit the demands of citizens.\textsuperscript{144} Additionally, complications arose from the absence of a European television network or other media source. Most of the media remains within national borders, focused on national issues, and as such, any EU events are broadcast with each member state’s particular bias.\textsuperscript{145} Nevertheless, while the lack of widespread EU news coverage and European reporting has been acknowledged, neither the EU nor individual governments have implemented any plans to create such a dedicated communications network for the institution. Drafts of the Constitution were circulated by the European Convention, and copies were made available on the official EU website, but not all member states engaged in private-sector discourse about the document. In spite of various “no” and “yes” campaigns and attacks against and rallies for the Constitution, it was not a widely distributed or read piece of legislation.

In addition, while the Convention should be commended for posting the agendas and minutes from Praesidium meetings, it perhaps should have considered the impact of how the public would view their accomplishments or lack of achievement on certain issues. For example, Praesidium decisions and actions regarding public opinion information and consultations were


tabled and delayed twice in 2002, but the first item on the agenda at an earlier meeting was a proposition that Convention members have a “tea-break” between sessions.\footnote{The Praesidium (2002). Summary of Conclusions - Meeting of the Praesidium, 22 May 2002. The Convention on the Future of Europe, Brussels, The Secretariat. \url{http://european-convention.eu.int/Docs/praesidium/2002/020522.S.pdf}.} Even though the most-Eurosceptic Brit may understand the importance of afternoon tea, EU officials probably would have had a difficult time explaining why more seemingly relevant and pressing issues, such as public involvement in the constitutional process, were not addressed sooner. Even if citizens did not read through the official minutes, there was no dearth of negative or unflattering news concerning the constitutional process. From mainstream newspapers to gossip tabloids, the press acknowledged and fuelled the public’s desire for scandals and the absurd; as a result, the media exploited rumours of outlandish requests from Convention members, particularly those of President Giscard. Reports of demands for high salaries and luxury suites hit the newsstands in early 2002, supporting notions that the EU is simply an “elitist technocracy,” out of touch with ordinary citizens, using the institution to their own advantage.\footnote{The Economist (2004). “Real Politics, at Last?” The Economist 373(8399): 60.}

**Representation at the Convention**

Direct participation is not the only important method of gaining popular support; accurate representation is also an effective means of giving legitimacy and credence to a governmental process. Analysis of the Convention’s attendees provides insight into how well or poorly certain countries and organisations were represented at the event and if the Convention truly reflected the constituents of the European Union. Although every member and accession state was represented in some capacity, the delegation from the European Parliament was not particularly reflective of all of the nationalities present at the Convention. Britain, Germany, France, and Italy had that largest number of participants, and Denmark, Spain, the Netherlands, Austria, and...
Portugal also boasted one representative. Other nationalities were represented by some of the substitute members, but Sweden, Ireland, and Luxembourg lacked participants.\footnote{O’Neill, M. (2009). The Struggle for the European Constitution. New York, USA, Routledge. 80.}

Officials from older member states found themselves in positions of higher authority at the Convention, with the Convention president, Valéry Giscard d’Estaing hailing from France and his two vice-presidents coming from other founding countries – Italy’s Giuliano Amato and Jean-Luc Dehaene of Belgium. Fortunately, the two deputy chairmen represented opposing political ideologies – Amato as left-of-centre and Dehaene as centre-right – and maintained some balance within the Convention.\footnote{Norman, P. 22.} Those countries with a more sceptical view of Europe found a few seats at the Praesidium, although they faced opposition both at the Convention and at home.\footnote{For example, a British participant, Peter Hain, had difficulties advocating the UK’s agenda at the Convention but also had to justify his presence at the Convention to a rather anti-European press and public back home.} As a result, Convention participants were, on the whole, pro-EU and pro-EU Constitution, offering little room for questioning the necessity of the project or for decrying potential adverse effects of such a document. There were claims that the Convention contained only “self-appointed elites,” with only a minority of those members “directly accountable to their electorate;” other critics also asserted that the Convention did not include participants from groups or political parties that had previously voted against Maastricht Treaty or Treaty of Nice, suggesting that membership was tailored to included only those representatives who would support the draft Constitution.\footnote{Castiglione, D., J. Schonlau, et al. 87.}
## Number of Convention Members by Nationality

<table>
<thead>
<tr>
<th>Country</th>
<th>Presidency</th>
<th>European Commission</th>
<th>MEPs</th>
<th>Government Representatives</th>
<th>National MPs</th>
<th>Total</th>
<th>Observers</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Each candidate country</th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>
### Breakdown of Convention Participants according to Country Size

#### Large States and Representatives
- Germany: 6
- France: 7
- Italy: 6
- United Kingdom: 6
- Spain: 4
- **TOTAL**: 29

#### Small States and Representatives
- Luxembourg: 3
- Denmark: 4
- Ireland: 3
- Finland: 3
- Sweden: 3
- Austria: 4
- **TOTAL**: 20

#### Mid-Size States and Representatives
- Greece: 3
- Portugal: 5
- Netherlands: 4
- Belgium: 5
- **TOTAL**: 17

Participants include presidents, representatives of the European Commission, MEPs, government representatives, and national MPs. Alternates are not included.
### Breakdown of Convention Participants according to Years of EU Membership

<table>
<thead>
<tr>
<th>Founding States and Representatives</th>
<th>Second Enlargement and Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>France</strong> 7</td>
<td><strong>United Kingdom</strong> 6</td>
</tr>
<tr>
<td><strong>Germany</strong> 6</td>
<td><strong>Ireland</strong> 3</td>
</tr>
<tr>
<td><strong>Italy</strong> 6</td>
<td><strong>Denmark</strong> 4</td>
</tr>
<tr>
<td><strong>Belgium</strong> 5</td>
<td><strong>TOTAL</strong> 13</td>
</tr>
<tr>
<td><strong>Netherlands</strong> 4</td>
<td></td>
</tr>
<tr>
<td><strong>Luxembourg</strong> 3</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong> 31</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Third Enlargement and Representatives</th>
<th>Fourth Enlargement and Representatives</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Greece</strong> 3</td>
<td><strong>Austria</strong> 4</td>
</tr>
<tr>
<td><strong>Spain</strong> 4</td>
<td><strong>Finland</strong> 3</td>
</tr>
<tr>
<td><strong>Portugal</strong> 5</td>
<td><strong>Sweden</strong> 3</td>
</tr>
<tr>
<td><strong>TOTAL</strong> 12</td>
<td><strong>TOTAL</strong> 10</td>
</tr>
</tbody>
</table>

Participants include presidents, representatives of the European Commission, MEPs, government representatives, and national MPs. Alternates are not included.
While true that only one third of the Praesidium was popularly elected, systems were in place to help maintain some semblance of fairness and representation.\textsuperscript{152} For instance, although Giscard was not fond of substitutes, fearing that the availability of alternate representatives would decrease the commitment and participation of the original representatives, the substitute players were instrumental in ensuring that a broader spectrum of political ideologies and parties was represented. The two main Convention members typically came from a state’s governing party and opposition, and the substitutes allowed smaller parties from countries to have their say as well. Alternatively, members and substitutes came from different chambers of government, not necessarily different parties, such as having one member from the German Bundestag and one from the Bundesrat.\textsuperscript{153}

Yet, the more established EU members retained their positions of power and exerted their influence over the other participants, suggesting that countries might not have received their fair share of debate time or recognition within the various working groups and Convention meetings. Newer member states, while perhaps not possessing the greatest amount of power, still had a large advantage over candidate countries; candidate countries, while allowed to send observers, could not prevent any decision agreed to by current member states, and their participants contrasted sharply with the other members of the European Parliament (MEPs). Candidate observers were less informed and less vocal than current members’ delegates, and in turn, this difference caused an imbalance in the debates and discussions, as applicant countries found themselves less involved in the drafting process.\textsuperscript{154} Countries less familiar with the EU structure and Brussels political scene also found great difficulty with the plenary sessions and public

\textsuperscript{152} The four members elected to their posts were the two members of the European Parliament (Mr Klaus Hänsch of Germany and Mr Íñigo Méndez de Vigo of Spain) and two from the national parliament (Mr John Bruton of Ireland and Ms Gisela Stuart of the UK).

\textsuperscript{153} Castiglione, D., J. Schonlau, et al. 77.

\textsuperscript{154} Norman, P. 45.
consultations, again due to underrepresentation or lack of resources, particularly when it came to translation services and other language concerns. Additionally, some may argue that since delegates from non-member states could not vote during the Convention, their allowed participation was merely a courtesy.

During the constitutional process, delegates often changed and were replaced, as certain officials received promotions or new posts in their home governments. Soon, many member states were represented by their respective foreign ministers, and the higher the rank of a Convention representative, the more consideration he or she received from Giscard. Consequently, not all representatives carried the same weight, and governmental envoys could use the threat of their government’s veto power to gain support for their opinions, suggesting that their opinion had a greater impact upon the drafting process. Thus, it should be no surprise that Finland, whose representative came from the realm of academia, found itself disappointed by the Convention’s conclusion. A few major drawbacks from having powerful figures like foreign ministers as representatives were their unavailability and their tightly booked schedules. Foreign ministers from Greece, Germany, and even France were frequently absent from meetings, causing strain and annoyance from other attendees. Combining these officials’ significant influence with their sparse attendance, it appeared as though certain countries received undue advantages, as some participants wielded power without much substantive commitment or presence at the Convention. Given the somewhat unbalanced representation, certain countries might not have been able to gain support for their agendas despite their most fervent efforts, while others could have easily used their political leverage to achieve their goals. Such an arrangement would hardly qualify as a fair, democratic, and representative process.

156 Norman, P. 132.
157 Norman, P. 133.
Not only were there discrepancies in representation due to size, length of EU membership, prominence of participants, and national language, but gender equality was also subpar. Overall, the European Convention experienced low female representation, and out of the 102 permanent members, plus the president and two vice-presidents, there were only 18 women involved in the process to draft the European Constitution, the equivalent of less than 18%.\(^{158}\)

Women’s organisations also formally expressed concern about the gender imbalance in the various Convention Working Groups.\(^{159}\) The European Parliament delegation suffered from perhaps the worst unequal representation, as it was not simply unrepresentative of the different nationalities, but also of gender.\(^ {160}\) Only five women were full members of the EP delegation, and even including the seven female alternates, less than 40% of the delegation was female, a disproportionate representation given that a little over 50% of the European population is female.\(^ {161}\)

From this analysis, it seems plausible than many EU citizens did not perceive the Convention as a faithful reflection of Europe’s population, further separating the public from any real attachment or loyalty to the draft Constitution. Even though the majority of the public did not read the Constitution, it is conceivable that they would have harboured distrust in a document produced by officials far different from themselves. With the flaws in representation, citizens may have wondered how their concerns would be addressed, or even if issues important to their livelihood would even be acknowledged; moreover, the general public felt as though it had no voice in choosing who participated in the drafting process and believed they had little say in

\(^{158}\) Castiglione, D., J. Schonlau, et al. 146


\(^{160}\) In 2000, the Commission recommended that female participation in decision-making processes be at least 40%. The Convention on the Future of Europe fell short of this advisory.

\(^{161}\) Castiglione, D., J. Schonlau, et al. 77.
what occurred at the Convention and what the Constitution would contain. It could be argued
that representation had little to do with the Constitution’s outcome, given that it was the French
and Dutch rejections that effectively ended the project despite having some of the largest
delegations at the Convention, but this hypothesis considers representation as only one facet of
elite-public interactions. One must also consider how well the Convention participants
communicated with their respective populations and how the public perceived their
representation at the meetings. Representation alone was not the single determining factor in the
Convention on the Future of Europe, but combined with other aspects of public relations and
interactions between officials and European citizens, it did indeed have a significant effect on the
drafting of the European Constitution.

**Openness and Transparency**

The Convention on the Future of Europe offered greater transparency to EU proceedings
than in the past, but this openness still encountered several difficulties. Although the European
Commission publically supported more transparency within EU institutions, going so far as to
publish a European Transparency Initiative after the Convention and IGC, many of their new
commitments were not decided upon until after the Convention was over.\(^\text{162}\) Moreover, these
new promises have still failed to be put into practice, and though the Commission pledged to
report explanations of votes and to open certain Council meetings to the public, concrete changes
remain to be seen.\(^\text{163}\) Analysis of the Convention proceedings indicates that the EU remains
rather closed-off to the ordinary citizen. First, while the Convention in general may have been

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\(^\text{162}\) The European Transparency Initiative was issued on November 9, 2005. Private citizens were allowed to submit
their proposals and opinions on three different transparency issues: transparency and issue representation, the
Commission’s minimum standards for consultation, and publication of data on beneficiaries of EU funds.
\(^\text{163}\) Commission of the European Communities (2005). The Commission’s contribution to the period of reflection
more public-friendly, the Praesidium was much more secretive than other Convention bodies, as only the 12 members had regular access and involvement in the meetings. No information about votes held in the Praesidium is publicly available, and many minority groups decried that lack of accountability that Praesidium members had to their respective constituents and Europe as a whole. In addition, meetings between the president and vice-presidents were held behind closed doors, and Convention members had to combat accusations that the proceedings were more like secret society meetings rather than democratic deliberations.\textsuperscript{164} In statements to the press, Italian Foreign Minister Franco Frattini reassured the public that there would be “no secret negotiations on the European Constitution” and that all debates would occur “in the open.”\textsuperscript{165} The public was able to access Convention documents from a special Convention website, and information was reportedly uploaded promptly, but direct access to meetings proved more complicated, and public observances and participation were lower due to security concerns and more restricted access to EU buildings.\textsuperscript{166} To create a compromise between safety and the need for information, the EU established a small number of salles d’ecoute, where EU citizens could be followed via video link, but this setup also eliminated the possibility of a personal connection between citizens and EU officials.\textsuperscript{167} During the Convention, the meeting’s official website averaged 47,000 hits per month. However, the EU contains over 500 million citizens, and only 11\% of the population claimed to have good, basic knowledge of the Constitution. One-third of the EU population had not even heard of the document, so while it was laudable that the EU did

\textsuperscript{164} Castiglione, D., J. Schonlau, et al. 98.
\textsuperscript{166} It should, however, be noted that during research for this project, many of the links from the Convention website (http://european-convention.eu.int/bienvenue.asp?lang=EN) were not accessible. Links are broken, and certain documents are unable to be found. This project will assume that links were working at the time of the Convention proceedings and that due to the passage of time, upkeep of the website has been neglected.
\textsuperscript{167} Castiglione, D., J. Schonlau, et al. 97.
establish online accessibility to Convention information, its effectiveness appears less than optimal.\footnote{Norman, P. 317.} To help include EU citizens in the constitutional debates, the EU established the Forum, or network of civil society members and organisations that distributed information and opinions about the Convention’s proceedings, although this participation method resulted in mixed outcomes. All participants in the Forum were allowed to submit their own contributions, and those parties with specific interests and/or expertise were occasionally consulted with on particular issues as determined by the Praesidium. Between September 2002 and March 2003, participation on the Convention’s Forum website increased by more than 100%, and more than 500 organisations actively contributed.\footnote{The Forum’s website at the time could be reached via this link - \url{http://european-convention.eu.int/forum.asp?lang=en}. However, due to the passage of time, the link will now redirect users to an official EU website on institutional reform; unfortunately this update of the website makes research difficult in finding exact documentation of what information the Forum website originally contained.} Nevertheless, this increased participation did not necessarily translate into increased incorporation of public ideas into policy. Not only were the majority of public opinions not taken under advisement, but the process favoured input from well-organised and well-funded societal groups, leaving other important but less resource-endowed entities and parties, such as advocates for minorities and non-white Europeans and smaller political parties, without sufficient say in the European Convention. Oliver de Schutter, an expert on EU affairs and member of numerous EU groups, evaluated the public consultation process within the Union as inefficient and recommended that civil society participation be more structured and have set procedures for interacting with EU officials during the drafting and reviewing stages of important EU legislation.\footnote{Castiglione, D., J. Schonlau, et al. 159.} The Convention Forum was a step in the correct direction for improving public awareness and involvement, but those citizens and organisations...
that did participate in the Forum were, however, not wholly representative of the EU population. Language concerns were prevalent among nationalities with lower Forum activity, and the applicant countries, whose languages were not yet considered “official,” had difficulties joining the debate due to this communication barrier.\textsuperscript{171} During the Convention proceedings, not all documents were translated into applicant languages, much to the dismay of many participants, and some members viewed this language barrier as a form of discrimination, as some applicant states could not afford to provide their own translators.\textsuperscript{172} While plenary sessions and other meetings were translated into all 11 official languages, proposed amendments were typically translated into French and English only. Granted, there are inevitable practical and financial restraints on translation in any organisation, and research finds evidence for both sides of the linguistic argument. Some members stated that the language limitations were not a significant barrier to negotiation, while other participants implied that though French and English are understood by a large majority of the EU population, citizens of applicant countries and those member states with less weight in the EU did express frustration at the lack of information available in their native tongues, with both Polish and Slovene representatives directly faulting the Convention for not translating enough of the documents into all participating European languages.\textsuperscript{173}

The openness of the Convention was at times dependent upon the working group, and public access was not standard across all issue committees. The Praesidium recommended that most meetings be open to the public, although it did insist that the “closed door option” remain a possibility. Logistics also played a role in the level of public access to Working Groups, but it

\textsuperscript{171} 90\% of all Council and Commission documents are written in English and French (the two main “working languages” of the institution). On the official European Convention website, however, documents at the time of writing were available in all 11 official languages, and 12 applicant state languages.
\textsuperscript{172} Castiglione, D., J. Schonlau, et al. 123.
\textsuperscript{173} Castiglione, D., J. Schonlau, et al. 130.
also suggested that the Convention entertained public observers only when it was convenient for officials and if the room was of sufficient size. The Praesidium did implement the use of contact groups, which allowed NGOs and other European organisations to interact with Convention participants and discuss issues relevant to each group’s specific cause, although contact groups did not technically constitute the “general public.” Chaired by a member or alternate member of the Praesidium, these contact groups covered eight topics of interest: social sector, environment, academia, citizens and institutions, regional and local authorities, human rights, development and culture. Unfortunately, for supporters of more citizen involvement, the Praesidium felt that it would be “unwise” to create comparable groups for general members of civil society. At the time, the Praesidium believed that the Convention Forum website was adequate, and it reminded Convention participants to also engage with their constituents via electronic media. Some Convention members, such as Vice-President Amato, proposed more all-inclusive public affairs, such as a public relations and promotional campaign and debate about the Convention’s work and activities. Amato suggested utilising major TV networks to help publicise the Convention on the Future of Europe, hoping to raise awareness and acceptance of the draft Constitution; however, this idea was delayed by Praesidium apprehension about such a press extravaganza, and other participants worried about the cost and effectiveness of such an event. Nevertheless, financial concerns and delayed action on public relations tasks created an

abundance of negative publicity. Soon after the Convention and IGC on the EU Constitution, the media began publishing stories about the ignorance of the EU public, particularly on the issue of the proposed Constitution. According to EU Communications Commissioner Margot Wallstrom, there was a “scary lack of knowledge about the European Union.”

**New Plans for Civil Society Participation**

Given the power of the people to block the passage of any major EU treaty changes via referenda and their willingness to utilise this tactic, elite consensus may no longer be enough to pass new treaties or amend EU laws, and public opinion will henceforth have a greater role in the enactment of future legislation. When citizens fear that their needs are being overlooked, that they have no say in their government (the EU government in this case), and worry about misrepresentation, a system that relies on some sort of public accountability can come to a standstill. Such is the case of the European Constitution. Since the Constitution was, and will most likely be if ever proposed again in the future, subject to public approval. Should the EU not take their current difficulties with communication, public relations, and representation into consideration, more rejections seem inevitable.

Following the French and Dutch failed referendums, the EU recognised that there may have been oversights during the constitutional process, lending support to the elite-public relations hypothesis. To address possible problems between EU officials and their constituents and to better assess the political climate of Europe and decide upon the future of the constitutional project, the Commission wrote “Plan-D for Democracy Dialogue and Debate” during the “period of reflection.” In particular, Plan-D intended to fix or ameliorate
communication problems between EU institutions and the general public, acknowledging that at the time of the constitutional debates in 2002-2003, there were indeed difficulties in relaying information between elites and their respective populations. Immediately after the constitutional rejections in both France and the Netherlands, the European Commission began work on the Action Plan to Improve Communicating to Europe, a precursor to Plan-D, and the changes offered by the subsequent Plan-D suggest that previously, there was little to no effective interaction between the European commissioners, members of national parliaments, and the general public. Plan-D proposes that the President and/or Vice President of institutional relations visit each member state to encourage public debate on EU issues, commissioners make themselves available to consult with national parliaments and that Representations of the Commission are more widely known and accessible to the public.178 Other initiatives include utilising Europe Direct Centres for EU events, creating European Goodwill Ambassadors and establishing a European Round Table for Democracy.179 However, the EU lacks a promising track record of successful implementation of public relations initiatives, and the results of Plan-D remain to be seen; nonetheless, this research indicates that unless these substantive changes and improvements are made, the EU Constitution will remain merely an elite exercise.

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178 Representations are offices of the European Commission that are located in each member state. Representations are the voice of the Commission in the member states, giving press conferences, briefings, and public statements on Commission issues. These offices will also report back to the Commission about the economic, political, and social situations in member states. Another key task of the Representations is to disseminate information about EU activities to citizens, via libraries, businesses, schools, and other communications services; in addition, Representations will also host public discussions on topics like the EU budget, security policy, and defence initiatives.

179 Europe Direct provides information about EU organizations, EU policies, and rights of EU citizens via telephone, email, online chatting services, or physical Europe Direct Centres. European Goodwill Ambassadors are responsible for publicising the Commission’s activities, policies, and achievements. The European Round Table for Democracy is intended to meet in each member state, bringing together EU citizens from all parties and opinions to increase public knowledge and awareness about integration issues and the future of the Union.
VI. Hypothesis III: Conflicting Motives and Differing Agendas

When elites gathered in Brussels for the Convention on the Future of Europe, they were responding to the call of the Laeken Declaration to address major challenges concerning the future of the European Union; yet, these officials had few specific instructions, and the lack of direction and clarity regarding the Convention’s agenda led to disputes amongst participants, many of whom arrived in Belgium with their own preconceived notions of what the meetings should accomplish. In 2001, the Laeken Declaration, which was used for a large portion of the Convention’s mandate, considered three pressing questions facing the Union:

- How to bring citizens, and primarily the young, closer to the European design and the European institution
- How to organise politics and the European political area in an enlarged Union
- How to develop the Union into a stabilising factor and a model in the new, multipolar world

However, the Declaration offered no roadmap or set agenda for the Convention, allowing participants to interpret these issues however they saw fit. To add to the complications, individual member states did not necessarily hold the same priorities as the Laeken Declaration. While there was some overlap between the above three topics and the issues held in high regard by various countries, some participants had their own personal and national reasons for attending the Convention. This section will investigate the multitude of elite motives during negotiations, beginning with the underlying cause of the confusion surrounding the Convention’s purpose. Much of the data comes from primary source documents, such as participant speeches, as well as interviews and other government documents. Unfortunately, while the Convention website has links to the Plenary Sessions verbatim reports, the link is broken, and the link to “follow the

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debates online” is also no longer working. Nonetheless, evidence shows that member states were not in concurrence upon what the goal of the Constitution was and what the EU should become as an international institution, illustrating that the Convention had failed to “work out a coherent vision of its strategic objectives.”

More Clarity and Specificity Needed

The rules laid out by the Laeken Declaration were unclear, leaving them wide open to misinterpretation and miscommunication, and as a result, conflict arose between the Convention president and other participants. In addition, the Convention’s agenda and mandate were described as “broad” and “vague,” and while it was initially thought that the Convention on the Future of Europe would simply try to consolidate and clarify policies and procedures within the EU, participants quickly latched onto the passage of the Laeken Declaration that included the phrase, “towards a Constitution for European Citizens.” As this chapter will show, the lack of specificity regarding the Convention’s purpose meant that delegates had difficulty determining if they were to merely combine and simplify existing legislation or if they were intended to edit and revise, as well as add to, the current treaties. Even in the early months of the Convention, participants still did not have a definite idea of what the Convention was to specifically accomplish, and the Praesidium remained uncertain as to whether Convention members should create a “basic” treaty, a constitutional treaty, or a full federalist European Constitution.

Although the Convention’s President Giscard d’Estaing and his two vice-presidents had the majority of power in controlling the direction of the Convention, not even the three leaders

\[^{183}\text{Norman, P. 54.}\]
could agree on the exact goal of these meetings. Each held a different view of what Europe should become. President Giscard had limited enthusiasm for a federal Europe, as opposed to Vice-President Jean-Luc Dehaene, who has been described as a “keen federalist,” whereas Vice-President Giuliano Amato took a pragmatic approach to integration and viewed the Convention’s goal of creating a constitution with caution. In addition, President Giscard took his own broad approach to defining the powers of the Convention’s presidency. He read the Laeken Declaration’s guidelines as allowing him to limit the involvement of substitute Convention members, as well as dictate and curtail the speakers at plenary sessions and any intervention speeches. Soon after the start of the Convention, Giscard backed down from his seemingly dominating stance on substitute participants, but the results of the Convention’s ill-defined framework had quite an impact on the interactions between elites, as evidenced by Giscard’s unpopularity for interpreting the Laeken Declaration to his own advantage.

Opening speeches at the Convention’s inauguration highlight the range of ideas concerning the ultimate goal of the Convention. Giscard, on one hand, chose to focus upon EU institutions and structure, using some federalist language, such as a “federation of nation states” and “Europe organised along federal lines,” and he expressed that the main issue at hand was to better organise the EU and improve upon the Treaty of Nice. However, other leaders voiced different priorities during the initial meeting in Brussels. Romano Prodi, the president of the European Commission, spoke of the EU’s international responsibilities for peace and development, the need for economic growth in Europe, and other ideological concerns such as

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184 Norman, P. 26.
freedom and security.\textsuperscript{187} His more globally focused speech contrasted with Giscard’s clearly internally-minded agenda, as well as differing from opening remarks by the European Council President, José Aznar, and Pat Cox, president of the European Parliament. Aznar wanted the Convention to strengthen the “deep cultural unity” amongst member states and to also better differentiate between which competences belonged to individual countries and those under the EU’s control.\textsuperscript{188} Cox, however, chose to emphasise the importance of defining the EU’s purpose and the future of the institution, in addition to making the Union more open and democratic.\textsuperscript{189} While all of these four influential leaders made reference to the constitutionalisation of Europe, none were in unison about the overall objective of the Convention, making for a rather confusing start to the proceedings; although, given that the text of the Laeken Declaration simply stated that “the Convention will consider various issues,” it is almost understandable that leaders failed to explicitly articulate concrete goals for the Convention.\textsuperscript{190}

The structure of the Convention reflected incomplete planning on the part of those at the Laeken Summit and officials in charge of organising the Convention. Many heads of working groups, such as Henning Christophersen, did not have a detailed description of their tasks at the Convention on the Future of Europe. Christophersen, leader of the Complementary Competences Working Group, was assigned the complicated task of investigating the “grey area” of competences shared between the EU and member states, and since the Convention did not give Christophersen specific boundaries for his job, he proceeded to follow a broad interpretation for his working group, angering fellow Convention members by trying to create additional non-

\textsuperscript{190} Castiglione, D., J. Schonlau, et al. 95.
binding competences in the realms of employment, culture, health and other social areas; the Competences Working Group furthermore attempted to pass rules that would have blocked other popular EU policies, such as the Erasmus educational exchange program. Additionally, Christophersen ignored the Convention secretariat, preferring to consult with his own personal assistant, seeming to work according to self-made rules and preferences. The Commission also used a different interpretation of the goals of the Competences Working Group, and overall, poor communication between the working groups, the Praesidium and other participants resulted in further confusion regarding the ultimate aim of the Convention and the Constitution. These problems were then further compounded by the fact that individual participants also failed to reach an agreement about the Convention’s purpose.

A few delegates attempted to fill the gaps left by the Laeken Declaration in efforts to give some direction to the Convention’s proceedings. Since the Declaration did not set up a basic skeleton for the Constitution, Edmund Wittbrodt, representative of the Polish Parliament, offered a two part framework upon which to base the new Constitutional Treaty. In his April 2002 speech, he suggested that in order to simplify the existing legislation, a new document should be drafted with the first section focusing on the basic elements of the EU and the second concentrating on the procedural aspects of the institution. Wittbrodt also strongly supported the inclusion of the Charter on Fundamental Rights and the creation of a single legal identity for the EU. An intervention by MEP Andrew Duff of the United Kingdom perhaps came the closest to defining the constitutional aims of the Convention in his 21 March, 2002 address to the plenary session. He enumerated three goals toward which members should strive.

191 Norman, P. 74.
192 Norman, P. 75.
First, at the top, we need to draft the legal text of a constitutional treaty....Second, we need to adapt the existing treaties so that they conform with the constitution....Third, we must galvanise the institutions into undertaking essential internal reforms.194

However, these efforts were not enough to prevent the subsequent bickering and dissent between delegates over the exact business of the Convention.

Highlighted Topics of Mutual Interest

Topics of mutual interest, or those issues most salient to all participants, held the potential for gridlock during the drafting of the European Constitution; nevertheless, consensus on what were importance issues did not necessarily equal agreement on how to address such items of concern.195 Delegates all felt that specific policy areas must be included on the Convention’s agenda, and gridlock categories included responsibility and voting in relation to the Common Foreign and Security Policy (CFSP), principles of jurisdiction between the EU and member states, the number of commissioners from member states and the scope of treaty reform.196 However, while Convention participants did agree that the EU needed to play a role in several key areas, such as foreign policy, defence and social policy, opinions diverged on what that role should be. Elites held conflicting views on the EU’s participation in foreign policy, and though the general consensus was that the Union needed to be more effective in international affairs, members from the “integration-minded” countries clashed with those of the “sovereign-

195 Issues with the potential to have caused a gridlock in the constitutional process were determined by analysing those topics for which parties on both sides consider the issue of great importance. The researchers (König, Warntjen and Burkhart) standardized the saliency across topics and were able to run statistics in order to test the significance of issues to particular member states. Their results were utilised as evidence in this chapter.
minded” member states. Additionally, the Laeken Declaration did not outline how the Convention was to going about creating a more unified and successful approach to foreign diplomacy, causing even more confusion as to the relationship between the constitutional process and the proposal to establish the EU as an international force in global security. In particular, the British were very protective of the use of their armed forces and appeared to find the Convention’s attitude towards a European defence too rather ambiguous for their liking. Prime Minister Tony Blair even acknowledged that before Europe could draft a common foreign policy, member states needed “to decide what [they] are unifying around,” implying that the Convention did not have a clear idea of what it was attempting to achieve. Regarding the issue of a unified European defence policy, the conventionnels held different views on the EU’s role in military actions. Within the Convention, 11 member states were part of NATO, and 10 belonged to the Western European Union, four were neutral, and none wanted to put their previous commitments, either to defence organisations or to neutrality, in jeopardy.

A proposal to change the number of commissioners and the structure of the European Council Presidency also caused a stir amongst Convention members, creating disagreement between the large and small member states. Though representatives agreed that discussions on the EU’s decision-making processes should be at the forefront of the Convention’s agenda, delegates disagreed on how these procedures should be reformed and streamlined. The majority of the small accession countries wanted to preserve the “one-commissioner-per-member”

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197 Norman, P. 89.
198 Norman, P. 90.
199 Norman, P. 98.
200 Norman, P. 96.

Full Convention members in NATO included Belgium, Denmark, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. Many of the accession countries, including Estonia, Latvia, Lithuania, Slovenia, and Slovakia, were also invited to NATO membership talks in 2002. Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom are all members of the Western European Union, a European defence and security organisation that, at the time of the Convention, was attempting to determine its role in Europe, given the expanding EU and need to create unified security policies.
system, as this arrangement would guarantee that all nationalities would be represented within the European Commission. However, the Constitution intended to eventually reduce the number of commissioner to two-thirds of the total number of EU members, meaning that not every country would be allowed to appoint a commissioner. Theoretically, this alteration should not have caused a disruption, as commissioners are to work only in the interests of Europe as a whole and not on behalf of their native countries; nonetheless, the conventionnels viewed representation in the Commission a key component of ensuring equal standing in the EU.

Countries such as Latvia, Lithuania, Malta Slovakia and Slovenia considered the commissioner debate a potential stumbling block for the Constitution, although these countries were, at the time, not full members and thus had less say on the content of the draft Constitution. Another key change proposed and hotly debated at the Convention was the creation of a permanent president of the European Council. The Constitution suggested establishing a permanent Council presidency, a post to be held for two-and-a-half years and renewable once, and the president would be elected by the European Council using qualified majority voting. British and French governments supported this move, wanting to give more power to member states through the European Council and the Council of Ministers, and the British in particular wanted to

202 Commissioners are appointed by their respective member states, although they are charged with representing European, not national, interests. Initially, large member states could appoint two commissioners each, and smaller countries were permitted one commissioner. However, following the Treaty of Nice, signed in 2001, each member was limited to one commissioner; additionally, the Treaty of Nice contained further restriction on Commission participants, with reductions planned after EU membership exceeded 27 countries. The president of the Commission, who is appointed by the European Council, assigns commissioners to areas of responsibility, known as portfolios, which range from agriculture to health and consumer policy to transportation. The Prodi Commission, which participated in the Convention on the Future of Europe, was composed of 20 members, following the older structure of two commissioners per large state, one per small.
203 König, T. and S. Hug, Eds. 147, 156, 172, 205, 212.
204 At the time of the Convention on the Future of Europe, the position of President of the European Council was held on a six-month rotating basis between member states. The president is not considered the “head” of the Council, but rather as “first among equals.” Duties include leading European Council meetings and representing the Council at meetings with the European Parliament. During the Convention, the position was held by Spain’s José María Aznar López for the first six months of 2002 and then Denmark’s Andres Fogh Rasmussen for the remainder of the year.
replace the six-month rotating presidency of the European Council with a permanent president, elected by member states.\textsuperscript{205} These changes brought forth concerns from smaller countries, like Austria, that favoured the rotating system. By having each member state take its turn at the helm of the European Council, smaller member states believed that their interests had a greater chance of being heard and protected. Smaller countries also expressed apprehension with the permanent presidency, as they interpreted the change to reduce the opportunity for small country nationals to serve in a leadership position within the Council.\textsuperscript{206}

\textbf{Tension over “Important” Issues and National Concerns}

Disagreement arose not only over how to address specific issues, but delegates also argued over which additional items belonged on the Convention’s schedule. The previous section outlined topics that all participants agreed must be discussed during the Convention and should be addressed by the Constitution. However, despite consensus on placing foreign policy, defence and EU decision-making processes on the agenda, there were numerous disputes over what other issues should also be debated and to what other items of concern the institution should direct its resources. Since no detailed agendas were produced prior to the start of the Convention, leaders took the initiative to create their own, each comprised of different vital issues of interest; unfortunately, the various motivations behind elites’ attendance caused tension over the many elements of the constitutional project. Less than a month after the Convention’s inauguration, delegates were already intervening during plenary sessions to interject their national concerns. For instance, Ms Lena Hjelm-Wallén of Sweden began by calling the current arrangement of the Common Agricultural Policy (CAP) into question, even though modifying the CAP had not be mentioned in any of the Convention’s initial plans. Despite Hjelm-Wallén’s note that she was

\textsuperscript{205} Norman, P. 47.
\textsuperscript{206} König, T. and S. Hug, Eds. 38-39.
“not suggesting that [they] discuss here the details of CAP-reform,” the mere mentioning of non-constitutional issues suggests that delegates had other concerns at heart apart from increasing European unity and institutional legitimacy. Sweden’s divergence from constitutional issues also extended to migration and asylum policies, criminal law, and international policing, and other member states also displayed their preferences for nationally important issues.207

Another example of diverging opinions centres on the role, or lack thereof, of religion in the Constitution. The conventionnels recognised the diversity of Europe, but members continued to disagree over what a true European Constitution should encompass. Article 10 of the Charter of Fundamental Rights, which had been approved by the EU in 2000, guarantees the “right to freedom of thought, conscience, and religion,” but some participants insisted upon the inclusion of “God” in the preamble to the Constitution.208 Although Turkey was not yet an accession country, one of its representatives stressed the importance of not limiting the document to “a certain cultural heritage. It should reflect the secular and multicultural identity of the continent.”209 Marco Follini of Italy echoed Turkish concerns, hoping that the constitutional debate would “not open up a religious or political controversy...[however] it would be harmful to evade this issue.”210 The reference to religion was an inflammatory topic for certain countries with strong Christian heritage. Italy, with its close connection to the Pope and the Vatican, supported the inclusion of “God” in the Constitution’s preamble, and Poland, the country of birth of the then current Pope, John Paul II, insisted upon enshrining Europe’s Christianity in the EU

Again, topics not initially considered at the start of the Convention crept in and threatened the stability amongst participants.

While many convention delegates considered a European social policy a priority, they encountered hostility from President Giscard on this issue. Giscard had little intention of discussing social issues at the Convention, and yet more than 40 Convention members and alternates were quite adamant about securing a place for social policy in the draft Constitution. Giscard and the Secretariat feared that debates over social issues would lead to a splintering of the Convention, detracting from the main goal of creating a European Constitution. They believed that such discussion would create even more working groups and that the Convention would eventually break down into a preponderance of subgroups and lose any sense of unity; however, the persistence of the social policy supports shocked President Giscard. In September 2002, 45 members demanded a working group on “Social Europe,” and these supporters voiced their concerns in the October 3-4 plenary session, despite opposition that wanted the Convention to focus solely on constitutional issues. Giscard eventually consented to their demands, but even after the working group was established, there was still tension amongst the delegates, and some members considered the large size of the Social Europe Working Group (60 members) a tactic to reduce the efficiency and usefulness of the group. This situation illustrates the difficulties of “pet projects” and shows how participants tried to block other members’ agendas. In addition, there was a danger of over-expanding the scope of the Constitution, as evidenced by Giscard giving in to supporters of the Social Europe Working Group and increasing the number of issues

211 König, T. and S. Hug, Eds. 140, 186.
212 Norman, P. 104.
213 Norman, P. 105.
The Social Europe working group consisted of 60 members, twice the number of participants as most other working groups. Many believe larger groups to be less effective since debates, arguments, and deliberations would last longer due to numerous opinions and demands; discussions with more members tend to also result in gridlocks more frequently than smaller groups. Support for this assumption can also be seen in the difficulties with voting procedures and the passing of legislation after EU enlargements.
addressed at the Convention, and with the growing list of constitutional concerns, the document became more and more complicated and unwieldy.

Almost every member state and candidate country brought their own national desires to the Convention, each interpreting the Convention’s mandate to accommodate their specific agendas; consequently, the list of topics for discussion grew with each intervention speech. Erwin Teufel, representing the German Bundesrat, argued for better clarification of the EU’s competences, similar to Aznar’s opening speech, though Teufel was much more explicit and direct in his demands.\footnote{Teufel, E. (2002). Statement in the Plenary Debate on Expectations for the European Union at the meeting of the Convention on the Future of Europe on 21-22 March 2002 in Brussels. \url{http://european-convention.eu.int/docs/speeches/104.pdf}.} While Romania’s Hildegard Puwak also wanted a “delimitation of competences,” Danuta Hübner of Poland issued a contrasting statement, claiming that “rather than setting down legally binding rules on competence,” enhancing the use of the subsidiarity principle would eliminate the need for a messy and complicated debate over the EU’s and member states’ exact realms of influence.\footnote{Hübner, D. (2002). Personal Remarks at the Convention on the Future of Europe 15 April 2002: Europe, What’s Its Purpose? The Union’s Mission. \url{http://european-convention.eu.int/docs/speeches/545.pdf}.} On the other hand, Peter Hain, the British Prime Minister for Europe, wanted the EU to make greater strides in tackling drug and people trafficking, industrial pollution, and study abroad opportunities, although somewhat akin to earlier emphasis on clearly defined competences, Hain also desired the EU to respect national sovereignty on the majority of issues and to exercise its authority only on issues directly related to European and cross-border affairs.\footnote{Hain, P. (2002). Speech at the EU Convention 21 March 2002. \url{http://european-convention.eu.int/docs/speeches/412.pdf}.} Interestingly, and perhaps even ironically, given the vast array of opinions about the Convention’s agenda, not even all delegates from the same member state were on the same page. John Bruton’s list of priorities largely different from that of Hain, for Bruton placed the highest value on personal security, affirming that the Union’s main
objective should be to protect its citizens and their livelihood. “Fairness” and “democratic involvement” only ranked third on Bruton’s list of concerns.217

According to questionnaires and survey sent out and conducted during the drafting process, Convention discussion topics were largely affected by national politics and constituent demands, and the results from this feedback provide further support for the claim that participant preferences on the Constitution’s content varied widely.218 Practically every country expressed concern for specific policy areas, and while these issues were no doubt important, they had less to do with the overall constitutional project and more with individual preferences. Austria wanted an atomic-energy-free Europe; Denmark refused to give up its cherished “opt-outs” for certain EU policies.219 Germany worried about the effect of a constitution on its contribution to the EU budget, and Ireland would accept nothing less than unanimity on EU tax laws.220 Both the Netherlands and the United Kingdom sided with Ireland on the issue of unanimity for financial frameworks, with the Netherlands possessing the most concern for budgetary issues, as it is the largest net contributor (in terms of percentage GDP) to the EU budget.221 Clearly, there was potential for heated debate and much disagreement on what the Constitution should and should not include.

A country’s position in the EU had a significant effect on its priorities at the Convention. Sweden loudly championed Swedish and Baltic-state specific views, fearing that its agenda

218 Questionnaires sent to all 102 full members, the alternates, observers, the Convention president and his two vice presidents. The response rate for the study used as evidence here was 84.5% for full delegates, 88.9% for government representatives from full member states, and 79.5% for accession government representatives. The study was conducted by Thomas König, Andreas Warnetjen, and Simone Burkhart of the German University of Administrative Sciences, the London School of Economics and Political Science, and the Institute for the Study of Societies, respectively. The surveys were standardised and included questions on EU and national competences, the Common Foreign and Security Policy, EU decision-making processes, and overall recommendations for the Convention on the Future of Europe.
220 König, T. and S. Hug, Eds. 102, 132.
221 König, T. and S. Hug, Eds. 176, 179, 237.
would be silenced by larger states in Western Europe.\textsuperscript{222} The accession countries, which were typically much smaller than current members, placed emphasis on economic concerns, hoping to benefit from the large EU budget. These smaller countries were mostly agriculturally based, which affected their contribution and/or benefit from the EU budget, and they also had the most to gain by joining the EU and obtaining access to large markets. For example, Latvia, the poorest member (or soon-to-be member), wanted to secure its place in the Union in order to receive monetary aid and developmental assistance. It also wanted the Convention to address issues related to migration and asylum, as those topics are particularly salient with Latvian citizens. Nevertheless, the Latvian representatives were initially wary of the Constitution, not particularly wanting to transfer so much power to an institution just a few years after finally gaining independence from Soviet control. In fact, it wanted the ability to withdraw from the EU without any constraints, as a safeguard in case the EU took away too much national sovereignty and freedom.\textsuperscript{223}

President Giscard clearly recognised potential problems between Convention members over the wide range of issues brought up during early plenary sessions, and the press and other Convention participants insinuated that some Praesidium members failed to put Europe first and that these politicians, such as Gisela Stuart of the United Kingdom, did not accurately represent a truly diverse Europe.\textsuperscript{224} Thus Giscard made a point to meet privately with “difficult” member states, the UK being one of the top countries in this category. However, all bilateral meetings between Giscard and officials from member states were conducted in secret, and no meeting minutes, notes, or comments were made available to the public.\textsuperscript{225} Thus, while research

\textsuperscript{222} Konig, T. and S. Hug, Eds. 227.
\textsuperscript{223} Konig, T. and S. Hug, Eds. 144, 148.
\textsuperscript{224} Norman, P. 30.
\textsuperscript{225} Norman, P. 48.
unfortunately will not be able to uncover the exact content of these meetings, the very fact that Giscard held such gatherings to discuss state-specific concerns supports the hypothesis that differing agendas and national biases posed a threat to the success of the constitutional process.

Many political scientists assert that the EU needs “a constitutional model that can accommodate multiculturalism and diversity,” based on mutual recognition, consent, and cultural continuity.\(^{226}\) However, elites at the Convention on the Future of Europe did not always see eye-to-eye on how to best address the various competing issues facing modern-day Europe. The vagueness of the task at hand led to a range of interpretations, making it difficult for participants to come to a consensus of what to discuss and to include in the European Constitution. In addition, there was an overall disagreement about the nature of the future EU – should it be a European federation or a “mere coordination of nation-state policies – and the intensity of national preferences hindered productive dialogue.\(^{227}\) Given the approaching enlargement of the EU at the time of the Convention, accession states wanted to protect their interests before officially joining the institution, suggesting that their intentions at the Convention were not necessarily to forge a stronger, united Europe; moreover, with current member states holding competing agendas and advocating their preferences in an unorganized fashion, the elites from all sides put the Constitution’s future in jeopardy.

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VII. Constitutional Aftermath and Conclusion

Although pro-Europeans can claim some victory with the successful ratification of the Treaty of Lisbon in 2009, this document hardly encompasses the same sentiment as a European Constitution, despite its relatively similar content. In fact, the two texts are so alike that it begs the question as to what purpose the Constitution would have served and if it truly would have been an improvement over the status quo, but the political meaning behind the Constitution, in addition to some of its noteworthy changes, would have further integrated Europe and would have more fully fulfilled the demand for a more democratic and participatory institution. The Treaty of Lisbon, unlike the Constitution, does not replace the current EU treaties; instead, it merely amends pre-existing legislation and, according to some politicians, adds to the complexity of EU policies and procedures by establishing even more protocols, opt-outs, and declarations.\(^{228}\) The Reform Treaty still does away with the former “pillar structure” of the EU, creates a single legal identity for the institution, and allows for the citizen’s right of initiative, but this new legislation fails to fully incorporate the Charter of Fundamental Rights and actually decreases the public’s involvement in treaty negotiations.\(^{229}\) The fact that the Reform Treaty was initially rejected by the Irish population during their 2008 national referendum suggests that the European public is still not content with how the EU handled the creation of this document. Only Ireland held a national referendum on the Treaty of Lisbon, as opposed to the more public-involved ratification process for the European Constitution, and the passage of the Treaty of Lisbon does not necessarily guarantee that national populations were satisfied with the legislation. By not utilising public referendums, the EU shows a lack of unwillingness for more


\(^{229}\) Christiansen, T. and C. Reh. 257.
open, transparent and democratic decision-making processes, one of the original goals of the European Constitution.

Despite the great degree of similarity between the Treaty of Lisbon and the failed Constitution, the effect of the Constitution’s rejection has large symbolic value and represents the abandonment of the constitutional model. Constitutional symbols, such as an anthem, flag, and motto, were removed from the Treaty of Lisbon, and though content-wise the two documents are alike, such a symbolic failure could hinder further integration and does not bode well for future attempts to present a fully united Europe on the global stage.230 In terms of improving EU decision-making procedures, the overall project initiated by the Laeken Declaration was mildly successful. The EU did become a single legal personality and the extended use of QMV will inevitably help avoid policy gridlocks, but the constitutional component of the Convention on the Future of Europe was rejected by both the European public and the majority of EU officials. Now that the Reform Treaty has entered into effect, there is currently no desire to revisit the task of creating a European Constitution, and the difficulties encountered during the constitutional drafting process indicate that the Constitution was written, debated and ratified using ill-suited procedures and that poor management of the constitutional project resulted in a missed opportunity to improve the institution, increase its interactions with European citizen and command a great presence in the international community.

While other analyses of the European Constitution and its failed ratification have focused primarily on the project’s futileness and the impossibility of creating a European demos, this study has suggested that the lack of success resulted from difficulties encountered during the constitutional drafting process, filling a gap in the existing literature on the European Constitution and the Convention on the Future of Europe. In addition, this thesis has highlighted

230 Christiansen, T. and C. Reh. 257.
many shortcomings of the EU’s current methods of legislation-making, and identifying problems within the EU is the first step to reassessing and improving how the institution operates. Consequently, rather than dismissing the entire constitutional project, the previous chapters have drawn attention to potential areas of reform that, once corrected, could allow for easier and more efficient decision-making and policy-creation in the future.

After analysing how the Convention on the Future of Europe was organised and managed, the degree to which Convention elites interacted with the European public, and the various disputes between delegates, it is clear that all three of this thesis’ hypotheses contributed to the failure of the European Constitution; nevertheless, not all of the hypotheses can be given the same weight, as certain aspects of the drafting process had considerably more negative effects on the Constitution’s outcome than others. Research on the different elite motives and agendas shows that there was considerable tension amongst participants, but this type of conflict is not exclusive to the Convention on the Future of Europe. Difficulties encountered during previous IGCs, particularly those disputes during the summit in Nice, illustrate that throughout EU history, member states have frequently disagreed with each other, over both serious and more minor issues. Yet in spite of such problems, the institution has still experienced over 50 years of success in reaching policy and legislative decisions, even while increasing the number of member states attending EU conferences and thus increasing to the number of possible preferences and national biases. Therefore, given that dispute amongst member states has been a constant element of EU relations, it is difficult to attribute the failure of the European Constitution to this factor alone. Evidence suggests that structural and procedural difficulties, as well as poor communication between elites and the European public, were more influential in determining the outcome of the Constitution’s ratification. With the increased importance of
public opinion during the constitutional process, inadequate consultation with European citizens and limited opportunities for civic participation appear to have posed the greatest hindrance to public acceptance, while the complicated structure and inefficient procedures inherent within the EU further exacerbated the suboptimal elite-public relations. To summarize the validity each hypothesis, it would be helpful to determine under what conditions the Constitution would have been more likely to pass, and using the evidence from the preceding chapters, it is possible to draw some conclusions about which variables caused a more difficult drafting and ratification process.

Power struggles within an international institution are inevitable, as opposing national concerns compete with each other and representatives try to achieve the best outcome for their home country. Nevertheless, the EU has had decades of experience in accommodating the different interests and priorities of member states, most noticeably through the various opt-outs and special considerations for certain EU countries, such as those given to Denmark, Ireland, Poland, Sweden and the United Kingdom. Elites may have had conflicting motives and agendas when drafting prior treaties, but they have been able to come to a consensus in order to pass legislation, such as the Charter on Fundamental Rights, and to reach agreements on monetary and border issues, creating the EuroZone and the Schengen Area. Thus, historical events indicate that there was still a possibility for delegates to overcome their personal desires and find a reasonably satisfactory arrangement on constitutional issues; however, opt-outs on the Constitution may have seemed to defeat the purpose of creating a more unified Europe and because of the federalist undertones of the document, representatives may have been more wary of making any concessions on national sovereignty. Had there been more flexibility in accepting EU policies, officials may have been more willing to work together on the Constitution, rather
than staunchly and stubbornly sticking to their national agendas. In addition, if the original Convention mandate had spelled out the exact topics to be discussed and included in the legislation, representatives would have had less leeway to interject pet projects and country-specific items into the discussions.

Considering the structure of the Convention, several changes could have improved the deliberations amongst elites and could have created a better organised meeting. For instance, had the Convention provided more translation services for member and accession countries, delegates would have been more properly informed on proposed amendments and issues regarding the Constitution. In addition, if the Convention had been held after the expansion of the EU, participants from all countries would have been treated as equals, each with the right to vote and influence the text and direction of the legislation. Greater inclusion could have fostered more meaningful debate, as well as given the delegates an increased sense of ownership and commitment to the Constitution. Moreover, a clear mandate could have provided more specific guidelines, explaining to Convention members what exactly they were to achieve during the constitutional process. With a better defined agenda, EU officials could have saved valuable time discussing the purpose of the Convention, and a more detailed timeframe could have reduced tensions over the listening phase, poorly-set deadlines and the overall sequence of drafting and ratification events.

With regards to elite-public interactions, a more publically inclusive and participatory process could have eased public worry over institutional changes and could have increased public knowledge about the EU and its legislation; additionally, had more members of the public been involved, national populations also might have felt a greater sense of loyalty to the Constitution, which might have resulted in successful referendums. More accurate representation
in terms of Convention members *vis à vis* the European citizenry also might have improved public perception, giving the drafting process a more democratic appearance. While public consultations were held throughout the continent, delegates at the Convention did not substantially take these meetings into consideration when drafting the Constitution, decreasing the effect of such consultations on improving elite-public relations, but had the EU actually listened to public concerns and included public opinion in their constitutional deliberations, there might have been more willingness to approve the draft text. If the EU had implemented Plan-D to improve communication between officials and their constituents prior to the Convention, perhaps more citizens would have been more informed and more willing to engage their representatives in debate over the content of the Constitution, and the public consequently might have felt more reassured that their voices were being heard and that the document truly reflected the diverse concerns of European populations. Increased dialogue seems to be the key to improving public acceptance and ratification of EU legislation, and future research on more recent EU laws and policies could help determine the effects of this Plan, as well as its effectiveness in incorporating the public into EU decision-making processes.

This thesis has shown how procedural difficulties, badly managed public relations and elite disagreements contributed to the failure of the European Constitution, hypotheses that few scholars have explored; as a result, while this study has examined three core factors of the constitutional process, each component possesses enough intricacies that a single hypothesis could be further expanded upon in its own thesis, going into much more detail and possibly investigating the dynamics of individual member and accession countries. Future research could analyse public relations campaigns in each participating country, branching off of the hypothesis regarding poor elite-public interactions and communication; additional inquiries could examine
the interactions between Convention elites in relation to their political party, position in national government, or personal preferences, which would give a more in depth look at the motives and agendas of the various delegates explored here. Furthermore, the scope of this thesis focused mainly upon the Convention on the Future of Europe, but the Constitution was discussed at several additional conferences, and an analysis of the Thessaloniki Summit and the 2007 IGC held in Lisbon would contribute to the hypothesis on the effect of procedural difficulties on the Constitution’s outcome.

The European Constitution had the potential to improve the democratic nature of the EU, and the public could have greatly benefited from more inclusive and representative methods of decision-making; as a result, the Convention on the Future of Europe could have instrumentally changed the structure and processes of the institution, altering voting weights, giving more power to directly elected officials, and creating more consistent presidencies. The Constitution’s failure illustrates the difficulties of passing legislation, particularly a document of such large scale. Elites with private agendas posed problems for reaching consensuses, unclear procedures created confusion and most significantly, inadequate communication between Convention participants and the public caused hostility and distrust, ultimately resulting in the rejection of the European Constitution. Although the Lisbon Treaty, which contains a large portion of the Constitution’s original text, has successfully entered into effect, it does not serve the same purpose as the Constitution, and unfortunately, with the numerous issues encountered during the almost decade long process of writing a constitution for Europe, support for any future constitutional project has decreased dramatically. This thesis suggests that until the above three main concerns regarding EU operating procedures, elite-public interactions and individual members’ motives are successfully address and resolved, any future efforts for more
consolidated treaties will meet with public resistance and procedural difficulties. As the EU continues to expand and assert itself as a single entity on the global stage, improved processes are needed to more efficiently and effectively create legislation and enact any new policies to benefit Europe as a whole. The constitutional project may have failed, but it has provided insight into the current problems facing the institution today, and if officials take notice of the EU’s present shortcomings, there is the opportunity to correct past missteps and to move forward towards a more unified Europe.
VIII. Appendix

Scholar’s Bank. “The History of European Integration and Accession.” from
https://scholarsbank.uoregon.edu/xmlui/bitstream/handle/1794/34/eu_his.PDF?sequence=1
Timeline of Significant EU Milestones

1951 – Signing of the Treaty of Paris, which creates the European Coal and Steel Community

1957 – Signing of the Treaty of Rome, creating the European Economic Community

1962 – Creation of the Common Agricultural Program (CAP)

1973 – First Expansion to include Denmark, Ireland and the UK

1979 – European citizens allowed to directly elect members to the European Parliament

1981 – Greece joins the European Community

1986 – Portugal and Spain join the EC

1986 – Passage of the Single European Act to improve trade and empower the Parliament

1992 – Treaty on European Union signed in Maastricht, officially creating the European Union

1995 – Austria, Finland and Sweden join the EU

1995 – Schengen Agreement signed to allow passport free travel between participating countries

1997 – Treaty of Amsterdam signed, outlining plans to reform EU institutions

1997 – Negotiations begin to admit Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia into the EU

1999 – Austria, Belgium, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain implement the Euro

2004 – Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia join the EU

2004 – 25 countries sign the Treaty Establishing a European Constitution

2005 – Rejection of the Constitution in France and the Netherlands

2007 – Bulgaria and Romania also join the EU

2007 – Treaty of Lisbon signed, based upon the draft European Constitution

2009 – Treaty of Lisbon enters into effect

### Heads of State or Government of Member States

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<th>Member State</th>
<th>Head of State or Government</th>
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<td>Austria</td>
<td>Mr Hannes Farnleitner</td>
<td>Mr Gerhard Tusek</td>
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<td>Belgium</td>
<td>Mr Louis Michel</td>
<td>Mr Pierre Chevalier</td>
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<td>Mr Poul Schlüter</td>
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<td>Ms Teija Tiilikainen</td>
<td>Mr Antti Peltomäki</td>
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<td>Mr Dominique de Villepin</td>
<td>Ms Pascale Andreani</td>
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### Government Representatives of Accession Candidate Countries

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### Representatives of the European Parliament

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<td>Mr Elmar Brok</td>
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<td>Ms Piia-Noora Kauppi</td>
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### Representatives of the European Commission

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### Praesidium Members

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<thead>
<tr>
<th>Member</th>
<th>Position</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Valéry Giscard d'Estaing</td>
<td>Chairman/President</td>
<td>France</td>
</tr>
<tr>
<td>Mr Giuliano Amato</td>
<td>Vice-Chairman/Vice-President</td>
<td>Italy</td>
</tr>
<tr>
<td>Mr Jean-Luc Dehaene</td>
<td>Vice-Chairman/Vice-President</td>
<td>Belgium</td>
</tr>
<tr>
<td>Mr Alfonso Dastis</td>
<td>Representative of Government holding Council Presidency during Convention</td>
<td>Spain</td>
</tr>
<tr>
<td>Mr Henning Christoffersen</td>
<td>Representative of Government holding Council Presidency during Convention</td>
<td>Denmark</td>
</tr>
<tr>
<td>Mr Georges Papandreou</td>
<td>Representative of Government holding Council Presidency during Convention</td>
<td>Greece</td>
</tr>
<tr>
<td>Mr John Bruton</td>
<td>Representative of National Parliaments</td>
<td>Ireland</td>
</tr>
<tr>
<td>Ms Gisela Stuart</td>
<td>Representative of National Parliaments</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>Mr Klaus Hänsch</td>
<td>Representative of European Parliament</td>
<td>Germany</td>
</tr>
<tr>
<td>Mr Íñigo Méndez de Vigo</td>
<td>Representative of European Parliament</td>
<td>Spain</td>
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<tr>
<td>Mr Michel Barnier</td>
<td>Representative of European Commission</td>
<td>France</td>
</tr>
<tr>
<td>Mr António Vitorino</td>
<td>Representative of European Commission</td>
<td>Portugal</td>
</tr>
<tr>
<td>Mr Alojz Peterle</td>
<td>Invitee to Represent Candidate Countries</td>
<td>Slovenia</td>
</tr>
</tbody>
</table>

### Observers

<table>
<thead>
<tr>
<th>Committee of the Regions</th>
<th>Economic and Social Committee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr Josef Chabert</td>
<td>Mr Göke Frerichs</td>
</tr>
<tr>
<td>Mr Manfred Dammeyer</td>
<td>Mr Roger Briesch</td>
</tr>
<tr>
<td>Mr Patrick Dewael</td>
<td>Ms Anne-Marie Sigmund</td>
</tr>
<tr>
<td>Ms Claude du Granrut</td>
<td>European Social Partners</td>
</tr>
<tr>
<td>Mr Claudio Martini</td>
<td>Mr Emilio Gabaglio</td>
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<tr>
<td>Mr Ramón Luis Valcárcel Siso</td>
<td>Mr João Cardona Cravinho</td>
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<tr>
<td></td>
<td>Mr Georges Jacobs</td>
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<td>European Ombudsman</td>
</tr>
<tr>
<td></td>
<td>Mr Nikiforos Diamandouros</td>
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</table>

Bibliography


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