Connecting National and Supranational Democracy: Lessons from the Making of the EU Constitutional Treaty[*]

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Abstract

The 2001 Declaration of Laeken inaugurated the most ambitious and open EU Treaty revision process so far. Most notably, the Laeken Declaration established a European Convention to prepare the new Treaty, which included political representatives from both the European and national level. Two negative referendum outcomes in Spring 2005 have however brought the Laeken process to a standstill. How can this Treaty revision process that was designed towards greater popular engagement have failed were the preceding ones (which were much more closed) succeeded? To answer this question, this paper focuses on the contrast between the successful establishment of a body (the Convention) for democratic deliberation at the supranational level and the problems of embedding the Constitutional Treaty debate within the national political spheres of the EU member states. I argue that while the European Convention may have succeeded in terms of deliberation, it failed in terms of public engagement. In a broader perspective, the Convention experience suggests that democratised European decision-making procedures cannot substitute for domestic democratic institutions. As European institutions lack the ability to prompt processes of democratic opinion formation in the member states, they can only operate successfully if they are complemented by a reinforced engagement of domestic institutions. Hence, a well-functioning multilevel democracy requires systematic linkages between supranational and national institutions, which remain underdeveloped in the EU so far.

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Introduction

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To answer this question, this paper focuses on the contrast between the successful establishment of a body (the Convention) for democratic deliberation at the supranational level and the problems of embedding the Constitutional Treaty debate within the national political spheres of the EU member states. I argue that while the European Convention may have succeeded in terms of deliberation, it failed in terms of public engagement.

In a broader perspective, the Convention experience suggests that democratised European decision-making procedures cannot substitute for domestic democratic institutions. As European institutions lack the ability to prompt processes of democratic opinion formation in the member states, they can only operate successfully if they are complemented by a reinforced engagement of domestic institutions. Hence, a well-functioning multilevel democracy requires systematic linkages between supranational and national institutions, which remain underdeveloped in the EU so far.

The structure of the paper is as follows. The next section provides a theoretical background by outlining the structure of democratic representation in the European Union and the problems it encounters. Section 2 then outlines the expectations that could be attached to the Convention. The empirical sections first look at the achievement of the Convention in terms of representation and deliberation (Section 3), and then at its shortcomings in terms of public engagement (Section 4). Section 5 concludes by trying to draw some lessons from the Convention experience for the democratisation of EU decision-making in general.

1. The Puzzle of Democratic Representation in a Multilevel Polity

The European Union imposes an additional political lawyer on top of the existing political system of its member states without however (completely) subordinating the latter. As a result, the Union appears as a hybrid system. On the one hand, it retains features of an international organisation in which member states retain their sovereignty: Treaty changes require unanimity, the Union's sphere of influence is limited to the competences delegated to it, important competences remain out of the Union sphere, member states bear the brunt of policy implementation. On the other hand, the Union has come to resemble a federal system, as is for instance reflected by the principle of legal supremacy, the use of qualified majority voting, and the role of the European Commission that goes far beyond any international secretariat.

The hybrid nature of the Union is also reflected in its system of democratic representation. On the one hand, representation takes place through the national governments in the Union's key decision-

making body, the Council of Ministers. In turn the national governments are controlled by their parliaments at home. On the other hand, European citizens are directly represented in European decision-making through the European Parliament. This hybrid system of representation in the EU thus has come to resemble the bicameral constructions familiar from federal systems with one parliamentary chamber representing the people directly and another representing the states.

Formally then European citizens seem to be well provided for as they are offered two, complementary channels of representation. However, in practice the sum of the two channels of representation in the EU add up to a system of representation that is rather less than more than the sum of its parts (cf. Benz, 2003). First of all, the structure of decision-making at the European level remains opaque. The Council of Ministers, which still remains the key institution in the EU, only slowly provides some insight in its proceedings. While the legislative powers of the European Parliament have steadily expanded, due to its dependence on the Commission and the Council it also gets involved in inter-institutional backroom dealing backroom (most notably, the conciliation procedure with the Council). As a consequence, EU decision-making remains short in visible, political contestation (cf. Hix, 2006). This is also reflected in the fact that the relationship between the Members of the European Parliament (MEPs) and the electorate is weak. Public knowledge of the MEPs is low and to the extent that it does exist, it is mostly limited to MEPs of one's own nationality. The elections of the European Parliament remain 'second-order elections' in which voting behaviour primarily reflects national political preoccupations (Reif & Schmitt, 1980; Schmitt & Thomassen, 1999).

The national level remains the prime focus for public political engagement. However, it turns out not to be a particularly hospitable environment for EU issues. Slowly but steadily national parliaments have become more engaged with European integration, even if there is huge variation between them. European affairs committees have become better organised and various parliaments have developed controls over their government's mandate in the Council. Still, relative to domestic politics, the impact national parliamentarians can have on EU politics remains small. Even if a national parliament successfully challenges a European decision in which its government has been engaged, it is unlikely to sway the position of other governments. Thus it is generally accepted that "European integration has meant an increase in executive power and a decrease in national parliamentary control" (Follesdal & Hix, 2006).

To sum up, democratic representation in the hybrid, multilevel polity of the European Union suffers from:
a)   Opacity of the decision-making process,
b)   The secondary role of the European Parliament,
c)   An absence of visible political contestation, and
d)   Very limited accommodation in national politics.
These conditions are expected to detrimentally affect the (input) legitimacy that EU decisions can enjoy among the European citizenry.

Nowhere were the imperfections of the EU's representative system more glaring as in the revision procedure of the EU Treaties. Representatives of the member governments would negotiate Treaty amendments behind closed doors in an Intergovernmental Conference. The European Parliament would have no formal involvement at all. At most it might be invited as an observer in some sessions in the margin. Also national parliaments would be mostly in the blind about the progress

of the negotiations. However, after the conclusion of the negotiations, any Treaty changes would have to pass by them for ratification. Still, ever since the French parliament's rejection of the 1952 European Defence Community, parliaments never raised any major objections to ratification. Whatever objections arose were more likely to come from referendums or the courts, if involved in the procedure. However, in most member states, ratification tended to be a rubberstamping affair.

However, by 2001, after five Intergovernmental Conferences in fifteen years, EU Treaty negotiations had turned into trench wars and the Treaties themselves had turned into labyrinthine texts reflecting their contorted conception. The 2000 Treaty of Nice negotiations could only be brought to a conclusion in the early hours of the morning after four days of negotiations, which brought Prime Minister Tony Blair to the assertion that "we can't go on like this" (Grabbe, 2000; cf. Gray and Stubb, 2001). At the same time, the Heads of Government recognised the Treaty of Nice to fall short in many respects still. Thus, at the end of the negotiations a Declaration was added that recognised the need to bring the Union and its institutions closer to the citizens, called for "a deeper and wider debate about the future of the European Union", and committed the member states to launch a new formal Treaty changing exercise in 2001. When this process was launched one year later, the European Council in Laeken adopted a radical innovation that at once promised to turn the Treaty revision process from the least democratic EU procedure into an example of democratic decision-making in a multilevel polity.

2. The Convention's Deliberative Promise

The Laeken European Council set out to confront the problems facing democratic representation in the EU by establishing an European Convention "in order to pave the way for the next Intergovernmental Conference as broadly and openly as possible" (European Council, 2001). The Convention would bring together governmental representatives on an equal standing with MEPs and members of national parliaments. The Convention was to convene in public and all its documents were to be made available in the public domain. Also a special forum was to be established to serve as "a structured network" of all kinds of societal organisations that would be engaged by the Convention by being regularly informed on its progress and by providing substantial input to the Convention's debates in turn.

Key to the democratic quality of the Convention was the idea of publicity. It was the fact that Convention meetings would take place in the open and that its documents would be directly available to the public (by way of the Internet), that was to ensure its democratic quality. The key importance attached to publicity in democratising the Treaty revision process needs to be understood in the light of a theory of deliberation (Elster, 1998; Magnette, 2004). In this light, the public nature of the Convention would facilitate the deliberative nature of its proceedings: the strategic behaviour that generally motivates negotiators to hide their true motives and to engage in power games, would give way to the force of the better argument. In the public arena of the Convention, strategic behaviour would quickly be revealed. Instead, under the eye of the public, participants would be forced to justify their positions by good reasons; they would listen respectfully to each other and respond with arguments rather than by the mere invocation of (veto) power.

Two major advantages can be attached to such a deliberative approach. First, the substantive quality of the debate was to combine with its public nature to attract the attention and appreciation of the public at large. The Convention's debate was to appeal to the people to develop their own ideas on issues discussed and to weigh the merits of the different views exchanged. It might even act as an open invitation to contribute directly or indirectly to the debates if they would feel they had anything to add

to what was being said. Thus the Convention might develop into the common focus for political debate on the future of the EU. The second advantage touched only indirectly on the democratic quality. It implied that the force of the better argument would indeed drive the debate to the best-informed, most effective conclusions, instead of getting stuck on sub-optimal ones. Participants were expected to overcome their particular interests and to focus more on the common goods to be achieved. Furthermore, the deliberative nature of the Convention would attract the best ideas possible to solve the challenges addressed. While there is no inherent logical connection between the most effective solutions also being the most democratic ones, the Laeken Declaration was written from the general assumption that a more effective Union was a key ingredient for increasing its democratic legitimacy.

As such, this theory of deliberation was not explicated in the Laeken Declaration. A full treatment of the democratic potential of deliberation was above all the preserve of academic circles. Here the experience of the 2000 Convention that had drafted an EU Charter of Fundamental Rights was already widely explored for the difference deliberation had made (Eriksen & Fossum, 2000; Deloche-Gaudez, 2001). Even if the political signatories of the Laeken Declaration did not invoke a fully spelled out theory of deliberation, most of them were probably well aware of some of its implications. Especially advocates of the Convention model (like, most notably, the Belgian Presidency) would appeal to the likely merits in terms of democracy and effectiveness of fostering a deliberative setting. Indeed, most governments were appreciative of the negotiation setting would need to be changed, since the last intergovernmental negotiations had shown all the symptoms of bargaining deadlock and yielded a sub-optimal result in the Treaty of Nice. However, some also appreciated the risks in setting a deliberative process in motion. Most importantly, the development of a direct rapport with the public by the Convention might reduce the ability of the national governments to keep the process under control.

For this reason the Convention was brought under a number of safeguards (Magnette & Nicolaidis, 2004). For one thing, it was made very clear that the Convention's "final document will provide a starting point for discussions in the Intergovernmental Conference, *which will take the ultimate decisions*" (emphasis added). Secondly, the Laeken Declaration ensured that in the composition of the Convention the representatives of national governments and parliaments far outnumbered those from the European institutions. The Declaration also stipulated that the Convention should complete its work within one year from its start on 1 March 2002, so as to allow sufficient time for diplomatic preparation and public debate before the commencement of the 2004 IGC. Last but not least, the European Council ensured a strong link with the chairmanship of the Convention. After careful considerations, it appointed former French President Valéry Giscard d'Estaing as Chair and had him flanked by two Vice-Chairs: Giuliano Amato and Jean-Luc Dehaene, former Prime Ministers of Italy and Belgian respectively. The European Council furthermore assured that it would have privileged access to the Chairman of the Convention, attributing to him a driving role in structuring the Convention's proceedings and insisting that he would come to each European Council to deliver an oral progress report and to receive the views of the Heads of State and Government.

Thus the Convention promised an exemplary democratic process of multilevel decision-making as its public character would facilitate a deliberative process that was to yield optimal solutions and public engagement. At the same time though, the deliberative character of the Convention was subjected to a number of safeguards to ensure that the process would not escape from the control of the national governments.

3. The Achievements of the Laeken Process: a supranational deliberative process

The way in which the European Council had defined the Convention fed into a fundamental "tension between *its constitutional role* and the *constraints imposed upon it*" (Fossum & Menéndez, 2005: 402). From the very beginning, many Convention members saw it as their principal challenge to overturn the assertion that it would be "the Intergovernmental Conference, which will take the ultimate decisions". Like a sorcerer's apprentice, the Convention aspired to rise beyond its principal and to tie its hands in turn. Two factors in particular facilitated the self-understanding of the Convention to move beyond the mandate of the European Council by tapping into autonomous sources of legitimacy: its mixed composition and its ability to engage in public deliberation (cf. Fossum & Menéndez, 2005: 403; Magnette, 2004; Magnette & Nicolaïdis, 2004).

A multiplicity of representative principles

The composition of the Convention reflected that it was to heed far broader interests than only those of the member governments of which the IGCs had previously been composed(cf. Shaw, 2003: 57; Closa, 2004). Besides representatives from all fifteen Heads of the member governments and from the thirteen governments of the EU candidate countries, the Convention involved two representative from each (member and candidate) parliament, sixteen Europarliamentarians and two members from the European Commission. Furthermore, representatives from the Economic and Social Committee, the European social partners, the Committee of the Regions and the European Ombudsman were invited to join the Convention as observers. As, apart from the chairmen, all members were to have alternates that could replace them in their absence, the total membership of the Convention amounted to 105 full members, 102 alternates, 13 observers and 12 alternate observers. With such a broad composition, the Convention was easily led to come to think of itself as a representative assembly.

Yet, however broad the composition of the Convention, in many respects it formed anything but a fair reflection of the EU citizenry (Shaw, 2003: 57ff.; Closa, 2004). Notably, the European Council only determined the composition of the Convention in terms of institutional background. It did not stipulate anything concerning the composition of the delegations of the European institutions in terms of nationality or political affiliation. While all countries were guaranteed at least three members, some got a much better share among the non-national delegates. Thus the EU G-4 (F, D, UK, IT) each took at least six full members and France even seven, while Greece, Luxembourg, Sweden and the new Member States remained stuck on the minimum of three. Also given the limited number of delegates each institution could send, the major political party-groups were heavily overrepresented with Christian-Conservatives and Social-Democrats amounting to two-thirds (68/105) of the full members. In contrast, only very few Convention members were affiliated to Eurosceptic parties that generally tend to be smaller and out of the political mainstream. One rather striking bias was that among the 105 full members of the Convention, only 17 were women (cf. Shaw, 2003: 58). Also lacking in presence were representatives of religious and ethnic minorities.

The composition of the Convention was thus designed to reflect various principles of representation. Given the variety of institutional backgrounds of the Convention members, each European citizen would be represented in multiple ways (through national parliamentarians, their government and European representatives). However, as indicated, the actual composition of the Convention was open to criticism for various biases. What is more, the multiplicity of representative

principles did not facilitate the transparency of the Convention's politics. Notably, depending on their institutional background, Convention members would operate along different political lines (Crum, 2004). Government representatives would mostly operate along national lines, sticking to their compatriots or forming coalitions with other governmental representatives. In contrast, representatives of the European and the national parliaments tended to rely far more on their party-political groups. Thus, while formally each European citizen should be able to recognise herself in various Convention members, in practice any sense of representation was likely to get lost in the diversity of representative principles for which the Convention membership catered.

A supranational deliberative process
Of all actors involved, few were probably more aware of how the Convention's success hinged on its ability to foster a deliberative setting as the Convention's chair Giscard d'Estaing. Typically, in his opening address to the Convention, he underlined:

> This Convention cannot succeed if it is only a place for expressing divergent opinions. It needs to become the melting-pot in which, month by month, a common approach is worked out. … in order to think about what proposals we can make, the members of the Convention will have to turn towards each other and gradually foster a '*Convention spirit*'" (Giscard, 2002, p.13, original emphasis).

A common 'Convention spirit' was a precondition for the Convention to avoid falling apart because of internal bickering. It also was a precondition for the Convention coming to a consensual result rather than presenting different options to the governments for consideration, a possibility that the European Council had explicitly left open. As Giscard observed:

> our recommendation would carry considerable weight and authority *if we could manage to achieve broad consensus on a single proposal which we could all present.* If we were to reach consensus on this point, *we would thus open the way towards a Constitution for Europe.* In order to avoid any disagreement over semantics, let us agree now to call it: a 'constitutional treaty for Europe' (Giscard 2002: 11, original emphasis).

Clearly, Giscard realised that if the Convention's report would consist of various options, it would basically leave any decision at the discretion of the Intergovernmental Conference. In contrast, the Intergovernmental Conference would have much more trouble bypassing a single proposal carried by a broad consensus, especially as this consensus would directly involve government representatives and had been able to wield considerable public legitimacy. What is more, Giscard's emphasis on the constitutional character also indicated that the Convention's work would take the form of an actual legal text that could be directly adopted, rather than some kind of a policy report that would still reflect a wide diversity of considerations and options.

To allow the Convention spirit to develop, Giscard planned the Convention's work to unfold through three phases: a listening phase, a study phase and a recommendation phase (Giscard d'Estaing, 2002, 8 ff.). First, the 'Convention spirit' was given time to develop over a four-month 'listening phase' over which Convention sessions were dedicated to the discussion of working documents prepared by the Convention Secretariat. By the time the Convention entered the second, study phase (July 2002) "a strong internal culture" (Shaw, 2003: 54) had already taken shape. In this phase most of the Convention's work took place in working groups. A first wave of working groups focussed on relatively technical issues, such as simplification and legal personality. A second round of working groups took stock of various fields of Union competences, like freedom, security and justice; external

action; and social Europe. Giscard's unveiling of the 'skeleton' of the draft Constitutional Treaty (CONV369/02) late October 2002 heralded the third, recommendation phase. The skeleton Treaty provided the Convention members with a concrete point of reference for their work by offering them a table of contents that was to be filled article by article over the Spring of 2003.

In the Convention culture that emerged, political-ideological divisions were suppressed in favour of technical arguments around concrete, legal proposals. Typically, as has been highlighted by Paul Magnette (2005: 442f.), a commitment to the simplification of the organisation of the EU developed as a *Leitmotiv* connecting the work of the conventionels. Thus, the Convention work reached unexpected levels of technical, legal sophistication. The very design of a single integrated Constitutional Treaty rather than the set of messy preceding treaties may be ranked among the foremost of these. Other typical examples are the proposal of a single legal personality for the Union, the introduction of a standard legislative procedure, a clear hierarchy of legal acts, the abolition of the three EU policy pillars, and the carefully calibrated integration of the EU Rights Charter in the Constitutional Treaty. With these simplifying proposals shaping its text and some unavoidable political compromises on issues of power-allocation at the end of its proceedings, the Convention succeeded in overcoming its internal differences and produced an integrated Constitutional Treaty endorsed by an overwhelming majority.

The difference made by the deliberative setting of the Convention is demonstrated by the fact that many of the Convention's proposals had already been floated during preceding EU Treaty revision exercises from Maastricht till Nice. However, within the negotiation setting provided by the IGC, they had never been able to secure the necessary unanimous support of the member states.
Notably, when the Intergovernmental Conference did take over from the Convention in summer 2003, the Convention's draft Treaty was not unpicked. A prominent coalition of the six EC founding states supported the Convention result and pushed for a short IGC (Euractiv 8/9/03). Most other states would have some specific reservations, but were reluctant to unpack the Convention package. This for instance was the position adopted by the United Kingdom with Prime Minister Tony Blair emphasising that "the Convention's end product […] is good news for Britain" – after which he continued to set out a limited but resolute set of 'red lines' (Foreign Office, 2003). In the end, only Poland and Spain threatened to let the Convention's draft falter in favour of the existing arrangements established by the Treaty of Nice because of the loss of voting power in the Council of Ministers that the Constitutional Treaty foresaw for them. This opposition was however neutralised by the combination of the Italian Presidency's success in securing the Convention's draft as the basis of the negotiations and minimising the IGC agenda and the Irish Presidency's skilful crafting of a compromise on the Council's voting procedure that conceded just enough to the Spaniards and Poles. Thus on 29 October 2004, the by then 25 EU member governments signed the 'Treaty establishing a Constitution for Europe' at Campidoglio in Rome.

Hence, in important respects, the Laeken process was a success. The public character of the Convention helped to overcome strategic bargaining and to facilitate deliberation. As a consequence, instead of getting stuck in deadlock or murky compromises *à la Nice*, a collective agreement was established that offered principled solutions on many issues and could count on widespread support. What is more, even if member governments had insisted on their final authority, they adopted the Constitutional Treaty as drafted by the Convention with only a limited number of amendments.

4. The Shortcomings of the Laeken Process: a failure to connect with national publics

While the theory of deliberation thus held in that the public character of the Convention facilitated deliberation and made results possible that had not been secured in previous bargaining settings, the one open question concerned public engagement, which in principle was expected to lead to public endorsement of the negotiation results. The negative outcome of the referendums in France and the Netherlands, but also the subsequent reluctance of other countries to face their national publics, suggest indeed that the aspired effect of deliberation leading to public engagement and endorsement was not successfully secured. This train of events raises two questions. First, why did the Convention fail to elicit public engagement? Second, why did governments fail to convince their national publics of the merits of the Constitutional Treaty in the ratification campaigns?

The Convention's limited engagement with the public

The answer to the first question lies primarily in the nature of the issues with which the Constitutional Treaty was concerned. In the course of the Convention it already became apparent that meeting in public and making all documentation available on the Internet did not necessarily ensure the engagement of the general public, however sophisticated the deliberation within the Convention and the solutions it produced. Given its mission, the Convention naturally focussed on procedural issues rather than on substantive policy issues that would directly affect citizen's interest. Moreover, as was already indicated, these procedural issues were addressed in a rather technical way in which legal expertise prevailed. Without the necessary background knowledge, these debates were difficult to follow. Thus newspaper coverage of the Convention meetings was limited, as most of the issues discussed did not lend themselves for easy public presentations. Media interest would only flare up (a little) when the distinctive interests of a certain member state would come at stake or at those moments when a conflict between the major players (the representatives of the major states, the Commission, and Giscard d'Estaing himself) would become apparent.

Also the working mode of the Convention in a way even contributed to its limited engagement with the public. As Jo Shaw (2003: 56) already pointed out early on, "there is a flipside to autonomy [and a strong internal culture - BC], however, and that is the risk of isolation". Indeed, it appeared that the pressure felt within the Convention to secure a consensus on a single text so much engrossed the conventionels that they had little time to also engage with external signals. The Forum that was foreseen by the Laeken Declaration to ensure regular contacts between the Convention and European civil society became a rather perfunctory channel and most civil society organisations fell back on their usual lobbying strategies if they were to have any effective influence on the work of the Convention. Links between the Convention members and their popular constituencies remained underdeveloped. In the direct feedback to their home institutions, practices among Convention members varied widely both in the depth of these communications and their structuring. Still, it appeared that such public events mainly served for Convention members to report back from the Convention rather than for them to receive ideas and instructions (Schönlau, 2004).

In short, whatever the quality of the debate within the Convention, it hardly engaged the general public. Arguably indeed the level of sophistication of the Convention debates only tended to increase the distance between the two. As the Convention neared its conclusion, less than 30% of the EU citizens had heard of it, and much fewer of them could comment on its work (Eurobarometer, 2003: 82ff.). Given its secretive nature, the subsequent Intergovernmental Conference did little to

make up for the limited public engagement in the process. Thus, when after the signing of the Constitutional Treaty, some governments faced referendums, they basically had to start from scratch in informing as far as the majority of the public was concerned. At the same time, this condition fed into the public perception that it was basically presented the Constitutional Treaty on a take-it-or-leave-it basis.

The Referendum Disillusion

Notably, calls for referendums had first emerged among some of the staunchest proponents of the deliberative nature of the Laeken process who felt that the deliberative nature of the Convention and its result of a Constitutional Treaty logically called for public engagement in the ratification process. This line of argument is exemplified in the call of 37 Convention members to have the Constitutional Treaty ratified by binding referendums in the member states:

> The Laeken Declaration recognised the need to bring Europe closer to the people. This was the impetus for the Convention on the Future of Europe, which will produce a Constitution or a constitutional treaty for Europe. If the Constitution is to have real democratic legitimacy, then it ought to be put to the people of Europe in a Europe-wide referendum. Not to do so would simply reinforce the impression of a deep democratic deficit in Europe; it would also send a signal that Europe is not about the people but about the governing elites (CONV 658/03: 2; cf. meeting of 24/25 April, CONV 696/03).

The argument that the constitutional aspirations of the Constitutional Treaty needed to be matched by the democratic legitimacy of popular referendums found resonance in many countries. Even in Germany where the Basic Law prohibits federal referendums, the possibility was raised to revise the Basic Law to allow for a referendum on the Constitutional Treaty to take place. Leading politicians in Belgium (Prime Minister Verhofstadt) and Finland (Justice Minister Koskinen) pronounced themselves in favour of holding a referendum but failed to gather the required political support.

Eventually, a majority of 15 of the 25 EU member states stuck to parliamentary ratification. Among the ten member states that did commit to a referendum, two, Ireland and Denmark, did so for constitutional reasons. In three cases – Luxembourg Spain and Portugal – the choice of holding a referendum can be seen as an expression of self-confidence of the government, with a general political consensus in favour of the Constitutional Treaty and a well-established high level of support for European cooperation among the electorate. In the remaining five cases (UK, France, The Netherlands, Poland and the Czech Republic), the contrary rather seems to have been the case with a considerably more divided climate and a government unable to withstand political and social pressure. Of these ten announced referendums, eventually only four took place. 20 February 2005, a majority 77% of the Spanish electorate came out in favour of the Comstitutional Treaty. However, after negative votes in France and the Netherlands on 29 May and 1 June 2005, as, the EU Heads of government inaugurated a 'period of reflection' until spring 2006 after which they will "make an overall assessment of the national debates and agree on how to proceed" (European Council, 2005). Only Luxembourg persisted in having a referendum, which yielded a majority of 57% in favour of ratification.

Notably, however, regardless of which side prevailed, the four referendums display notable similarities in the engagement of the public. First, all four referendums revealed a major disjunction between the size of the opposition to the Constitutional Treaty among the political elite and that among the populace (Table 1). Even in the Spanish referendum, which came first and ushered in a comfortable majority of 77% for the Yes-camp, popular support fell considerably short of the landslide

endorsement that the Constitutional Treaty would have received in parliament. The negative referendum outcomes in France and the Netherlands revealed major gaps between the inclination of the parliamentary representatives and the people. Also in Luxembourg the 57% popular support still fell far short of the prevailing inclination among the parliamentary representatives.

Table 1   Shares of Constitutional Treaty Supporters among Parliamentary factions and Electorate

	A. Parties Seat Share Lower House (%Yes)	B. Parties Vote Share Last Lower House Elections (%Yes)	C. Electorate (%Yes)	A-C	B-C
Spain	95%	86%	77%	18%	9%
France	93%	70%	45%	48%	25%
The Netherlands	85%	83%	38%	47%	45%
Luxembourg	92%	87%	57%	36%	31%

Source (A, B): Electionworld.org (Consulted October 2005).

Second, zooming in on the relations between the different parties and their sympathisers, it becomes apparent that voters only put limited trust in their political elites on the issue of the Constitutional Treaty (Table 2; cf. Crum, 2007). This applies in particular for the major parties that supported the Constitutional Treaties. Many governing parties that were logically bound to campaign in favour of ratification found as much as a quarter up to a half of their constituency defecting to the No-camp. Even more dramatic was the situation for opposition parties that joined the pro-Constitution camp, who in most cases saw the majority of their following joining the No-camp. On the other hand, anti-establishment parties opposing ratification seem to have considerably greater appeal to their voters as we find around 80% up to 90% sharing the party stance.

Table 2   Distribution of Voters in EU Constitutional Referendums by Party Affinity

GOVERNMENT PARTIES	Yes	No	PRO-CONSTITUTION OPPOSITION	Yes	No	ANTI-CONSTITUTION OPPOSITION	Yes	No
Spain								
PSOE	**93**	4	PP	**72**	19	IU	32	**61**
			CDC/CiU	**62**	19	ERC	5	**87**
			PNV	**42**	57			
France								
UMP/UDF	**70**	24	PS	**35**	55	FN / MNR	4	**81**
			Verts	**33**	50	PCF	6	**90**
The Netherlands								
CDA	**53**	47	PvdA	**37**	63	SP	13	**87**
VVD	**49**	51	Green Left	**54**	46			
D66	**51**	49						
Luxembourg								
CSV	**79**	21	LSAP	**49**	49	ADR	23	**77**
DP	**55**	42	The Greens	**48**	49			

Source Eurobarometers (2005), Blank answers disregarded, hence not all pairs sum up to 100%.

Third, in all four referendum countries, major parts of the electorate felt information on the Constitutional Treaty to be too little too late. In Spain and the Netherlands this applied in fact for more than half of the voters and in France and Luxembourg it was still about one-third. Similarly, large

segments of the societies, in particular in the Netherlands and Luxembourg, felt that the debates on the Constitutional Treaty started too late. Close to half of the electorates in all four countries only made up its mind on how to vote in the final weeks before the referendum, one-fifth up to one-third (in the Netherlands) only decided this in the final week.

Table 3   Indicators of Referendum Campaign Exposure

	Spain	**France**	**The Netherlands**	**Luxembourg**
Had all the necessary information?				
Yes	43	66	41	62
No	52	33	56	37
DK	5	1	3	1
Debates on the Constitution started				
Too late	46	37	67	68
Just at the right time	22	39	13	20
Too early	13	15	7	6
DK	19	10	13	7
Moment of vote decision				
At referendum announcement	35	29	26	29
Early in campaign	23	29	21	22
After Referendums in F and NL	-	-	-	4
Final campaign weeks	16	20	20	23
Final week before Referendum	15	14	21	17
Day of Referendum	10	7	11	6
DK	2	1		

Source Eurobarometers (2005).

All in all then the Constitutional Treaty appears to have given rise to a major gap between the political elite and the electorate. And even if considerable segments of the electorate only made up their mind quite late in the campaign, the information whereby the political elites might have persuaded them failed to arrive or came late. One may wonder whether an earlier start of the campaign or greater investments in it would have sufficed to correct this, or whether the Laeken process and its product had already much earlier departed from what the large segments of the public could be easily convinced of. Obviously of course two referendums did usher in the required Yes and even in the two others there were also significant segments still coming out in favour. But as was clearly recognised by the Heads of Government's decision to call for a period of reflection, the failure to convince the majority of two EU electorates could not be treated as merely accidental but should rather be treated as indicators of a much wider problem.

5.   Lessons for Democratic Representation in a Multilevel Polity
The making of the Constitutional Treaty probably was the most public decision-making exercise ever in the European Union. Also probably never before did parliamentarians have such a hand in the decision-making, certainly not in Treaty-making. For sure, in the end it were the governments that concluded the negotiations in the Intergovernmental Conference but by and large the key features of the Convention's draft were preserved (cf. also the distinctively warm EP-report, 2004). Even if the governments kept the reigns in their hands, the Laeken process importantly got rid of the opacity that characterises EU decision-making and brought parliamentarians centre-stage. Yet, what was set up as a democratic process remained in the end fatally detached from the public.

The nature of the Convention's proceedings held little public appeal. The common Convention spirit that enabled it to overcome the complexity of the issues and the diversity in viewpoints was secured at the price of a restricted openness to public engagement. Furthermore, even if the Convention included representatives of national governments and parliaments, the Constitutional Treaty only really reached the national political sphere when it came to ratification. The referendums suggest that for many citizens this came to late and they felt they had not been informed sufficiently and early enough. The referendum campaigns also revealed the Constitutional Treaty to be short of convincing sponsors. Citizens showed themselves much less convinced of the merits of the Constitutional Treaty than their political representatives.

From this analysis of the Laeken process, (at least) four lessons for democratising the multilevel polity of the EU can be derived.

1) *Publicity and deliberation alone do not guarantee public engagement.*
Compared to most political processes, and certainly EU ones, the Convention was an exceptionally public affair and it yielded an exceptionally deliberative process. Still it did not provoke much public engagement. Also in day-to-day EU decision-making, publicity and deliberation have been very popular values. EU institutions have dedicated much effort to increasing the accessibility of their documents. Much pressure is on the Council to open up their meetings to the public. The value of deliberation has above all been applauded in the work of EU Committees that support the work of the Commission and the Council (Joerges & Vos 1999). Yet, whatever the merits of these initiatives, they certainly will not suffice to increase public engagement with EU politics.

2) *Nor does increasing the influence of parliamentarians lead to public engagement.*
The involvement of MEPs in the Convention was yet another sign of the expanded influence of the European Parliament. The EP's powers have steadily expanded in the successive rounds of Treaty reform. On many competences the EP has become a full co-legislator and also its powers over the Commission have increased. Yet, as two former MEPs have pointedly observed: "While [the EP] has steadily increased its powers in the legislative and inter-institutional arrangements of the EU, it has not yet succeeded in translating its authority into a more visible role amongst Europe's electorates" (van Hulten & Clegg, 2003, p. 4). Certainly, whatever its influence on the Constitutional Treaty, also in the Convention process the EP has failed to claim such a more visible role.

3) *The number and complexity of political divisions that have to be overcome in EU decision-making impose a major constraint on public engagement.*
Issues in EU politics are likely to be complex and multidimensional, if only because whatever substantive dimension is at stake it will always intermingle with the international dimension. In day-to-day EU politics, the multidimensionality is in part reflected by the different institutions with the Council representing the member states, the EP the European citizens and the Commission 'the general EU interest'. If decision-making in each of these institutions separately is already hard to follow, it is virtually impossible to get a synoptic overview of the whole legislative process. In the Convention these different dimensions (and arguably even more) were brought together in a single body and they could only be handled by fostering a strong internal ethos and by depoliticising issues as much as possible. However, this left very little cues to the outside observer. In turn, as the internal process of

the Convention strained the abilities of the political representatives, it left little room for them to be receptive towards the public.

4) *EU politics is inherently tied to national politics. What is more, national political engagement cannot be left to the final stage of the decision-making process alone.*

Whatever happens at the European level, the national level remains the main focus of political attention. Ultimately then the fate of EU decisions is decided at this level. The importance of national politics was acknowledged by the engagement of representatives from national parliaments in the Convention. It was also reflected in some of the Convention's proposals, most notably the 'early warning mechanism'. Still, the national parliamentarians in the Convention failed to operate as an effective liaison between Europe and national politics. While they were effectively co-opted in the Convention process, they generally had a hard time engaging their colleagues at home. Most members of national parliaments only really got engaged when they had to fulfil their task of ratification, and while the majority of them were quite willing to go along with that, they were not in a position to convey that position convincingly to their constituencies.

In day-to-day EU decision-making national parliaments have steadily improved their instruments and skills. Still, their engagement tends to be relatively late in the process and whatever powers they have are mostly negative; they may block certain decisions, but are much less likely to contribute to a constructive solution. What is more, many of parliament's efforts focus on an inter-institutional standoff with the government rather than that they expose ideological divides. This limits their public appeal. The inability of national parliaments to accommodate the issues involved in the Constitutional Treaty at an earlier stage, should lead us to look more closely at the way in which European integration has affected their political role (cf. Schmidt, 2006).

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