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The Past and Future of European Institutional Integration

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The European Constitutional Settlement

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Over the past half-century the EU has successfully expanded its substantive mandate and institutional prerogatives to a level without parallel among international organizations. Today this process has reached what appears to be, barring large exogenous shocks, a stable constitutional equilibrium. The EU may expand geographically, reform institutionally, and deepen substantively, but all this currently seems set to take place essentially within the contours of the existing European constitutional structure. The time has come to acknowledge the existence of the ‘European Constitutional Settlement’—a plateau in the process of European integration unlikely to be upset by medium-term trends.¹

The EU’s constitutional evolution since the Treaty of Maastricht illustrates this phenomenon. The institutional balance has evolved only slowly. The powers of the Council and Parliament have increased slowly at the expense of the Commission, intergovernmental cooperation outside the core ‘first pillar’ of EU institutions has been reinforced, adjustments have been made to voting weights, and the membership has enlarged to twenty-five members. The period has also been one of substantial, perhaps unprecedented, achievements, with the ‘completion of the single market’, expansion of foreign, defense, immigration and internal security powers, the single currency, and enlargement. But all this was launched at Maastricht or before and completed with remarkably little further constitutional reform. From this perspective, the recent draft constitutional treaty, like Amsterdam and Nice before it, was a conservative document that consolidated rather than transcended the constitutional status quo. Its ambitions for substantive and institutional reform were modest. And there is no immediate reason to believe any of this will change.

Yet most scholars and commentators do not see it this way and, as a result, writings on the EU reveal considerable tension between reality and rhetoric. On the one hand, they remain wedded to the goal of ‘ever closer union’, culminating in a European federal superstate. Few explicitly acknowledge holding such a view, of course, but it is implied in the widespread tendency among those

¹ I have referred to this previously as the ‘European Constitutional Compromise’ (2005a, 2005b).

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who study or support the EU to emphasize, even exaggerate, new steps toward integration. On the other hand, an equally prevalent tendency is to criticize the lack of substantive progress in the EU and a purportedly debilitating ‘democratic deficit’ in the EU, which is judged responsible for a crisis of legitimacy. Without fundamental reform, it is argued, the process of European integration may well falter or collapse. The EU is failing to achieve what it could with greater public legitimation. It must move forward, yet it is in crisis.

This combination of ambition and alarm spawned the EU’s recent, ill-fated constitutional project. If one believes that the EU can and should move forcefully toward more centralized governance *and* that the major impediment is the lack of direct democratic legitimacy, a democratic constitution and a grand public debate over ‘finalité politique’ may seem an obvious recourse. Yet it is now clear that this effort to legitimate the EU through constitutional engineering failed—and did so for reasons that go far beyond a few mismanaged referenda. The decade of debate over the EU’s constitutional future—probably the broadest and deepest such debate in human history—failed from the start to create an attentive, informed and engaged public. It was dominated from the start by a handful of ‘symbolic extremists’ of a Euroenthusiastic or Euroskeptic persuasion. Both groups cast the debate as a vital one for the future of Europe—Euroenthusiasts because they aspire to much more, and Euroskeptics because they aspire to much less. The unhealthy ideological codependence between these groups fueled exaggerated and cloudy rhetoric about the purposes of European integration. Such views belie the modest content of the constitutional treaty, which reaffirmed rather than fundamentally reformed the existing scope of European integration. The population in the center of the EU political spectrum, whose interests in integration are far more pragmatic, remained either apathetic or, for the few who paid attention, unsettled. There is little disagreement now that, had the reforms been sold as the conservative tinkering they were, surely less time would have been wasted and more achieved.

Obscured in this debate has been a middle position, which the first part of this chapter sets forth. On this view, the EU is quite successful, and its existing constitutional settlement equilibrium is likely to endure, with incremental changes, for the foreseeable future, not least because it serves the interests of Europeans better than any feasible alternative. The constitution was, therefore, an unnecessary and risky political gambit. Throughout, my central thesis is that *the stability of the current equilibrium, and its precise terms, follows from the best—by which I mean empirically the most strongly validated—social scientific understanding available about how the EU, and political institutions more generally, actually work.*

This chapter explores the substantive, institutional, and ideological dimensions of the European Constitutional Settlement. The first dimension is *substantive*. The primary motivations behind European integration have almost always been functional. The EU moves forward when formal policy coordination helps manage

cross-border policy externalities stemming from transnational interdependence. Today no functional ‘grand projet’ of this kind exists. European social policy is a chimera, while a stronger, yet viable, foreign and defense policy would not require constitutional change. The second dimension is *institutional*. The EU remains, despite a few federal elements, essentially a confederation of nation-states: the most ambitious and successful among international organizations, rather than a federation aiming to replicate and supplant European nation-states. Its limited ‘state capacity’, whether from a political, coercive, fiscal, or administrative perspective, appears a permanent structural characteristic impervious to all but an unforeseeably great exogenous shock. The third dimension is *ideological*. Because the EU handles issues of low salience, relative to national ones, publics are unlikely to mobilize in response to European issues, whether in spontaneous opposition or in response to official encouragement. The constitutional project failed to shake this ideational equilibrium by mobilizing greater popular support for the EU, because the basic premise on which it was based—namely that expanding institutional opportunities for public participation generates greater participation, deliberation, and legitimacy—is inconsistent with our best understanding of how modern democracies actually work. Bad social science makes bad policy. I conclude by briefly examining some ways in which scholars of political science, political philosophers, and legal academics have been complicit in propagating a view of the EU that is inaccurate, and the biases in the existing literature that have resulted—including insufficient attention to the existence of the European Constitutional Settlement.

The Substantive Dimension of the European Constitutional Settlement

Historically, the main impetus toward European integration has been functional. Major steps in the development of European institutions have rested on ‘grands projets’ such as the customs union, common agricultural policy (CAP), single market, single currency, or Eastern enlargement. In each case, historians increasingly agree, pressure to manage substantive policies stemming from new forms of socioeconomic interdependence motivated governments to undertake new institutional commitments. To be sure, ideological and geopolitical objectives—such as realizing European federalism, avoiding yet another Franco-German war, opposing Communists abroad and at home—played an important subsidiary role, particularly in defining the institutional form integration took. Its substantive content was shaped primarily by functional imperatives (Moravcsik 1998). Most of those imperatives were those of a continent of relatively small but highly developed nations undergoing an unprecedented postwar economic boom, thereby creating the regional intra-industry flows of trade and capital that rendered coordinated

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regulation attractive (Milward 1984, 1993, 2000). From the ‘relaunching’ of European integration after the failure of the European Defense Community and the ECSC, if not well before, even the most ambitious proponents of European integration concluded that integration without the functional imperatives was impossible—and little has changed since.²

This functional focus helps explain why individual governments have generally embraced European-level governance schemes only after exhausting domestic policy alternatives. The Coal and Steel Community was a response to a crisis in postwar French and German economic planning (Milward 1984). A decade later, the EEC was an instrument to shape multilateral trade liberalization that had come to be viewed as inevitable. France promoted the CAP in the 1960s and single market liberalization in the 1980s only after subsidized domestic alternatives had reached their fiscal limits. For decades, in the face of increased capital mobility and declining credibility of domestic macroeconomic management, governments resisted a single currency in favor of domestic policy alternatives (Moravcsik 1998).³

Decisions to accede to the EU, from that of Britain in the early 1960s to those by central and eastern European countries in the past, rested similarly on the widespread conviction that there is no unilateral alternative to integration. Individual governments weighed the benefits of coordinated policymaking against the costs imposed by adjusting diverse policies and social structures to common policies. Time and again, it was the uniquely high levels of socioeconomic interdependence among many European countries, and the corresponding negative externalities to uncoordinated policies, that outweighed the maintenance of distinctive national systems.

The limited substantive mandate of the EU, which remains perhaps its most striking constitutional characteristic vis-à-vis national governments, reflects the unevenness of functional imperatives. Recent academic studies suggest that 15–20 percent of European national laws stem from the EU—not much higher figures one often encounters (see Töller 2003). It could hardly be otherwise, given the narrowness of the EU’s formal legal mandate.

To illustrate this, current European policymaking can usefully be divided into three categories. The first contains areas of centralized EU discretion or inflexible

² Already in 1949–50, and even more clearly after 1954, Jean Monnet understood that integration could only be conducted by functional means. Yet even Monnet underestimated the dominance of functional market-driven forces. His firm belief was that functional integration would best take place within highly regulated sectors of the economy like nuclear and transport, and with strong central authority, rather than through markets. This is why he passionately opposed the formation of the plan for a European Economic Community, secretly begging German Chancellor Konrad Adenauer to kill it, until he finally bowed to a fait accompli imposed by German economic interests (Moravcsik 1998).

³ See McNamara (1997) for case of policies where material interests are less clearly defined, material interests may often be mediated by policy ideas.

EU rules, including monetary policy, antitrust policy, and restrictions on internal tariffs and quotas. The second contains areas of joint decision-making by EU member states within common institutions, as in external trade; industrial standardization; agricultural pricing and export policy; a subset of regulatory issues in environment, consumer and other policies; fisheries policy, and certain rules regarding service provision. In many of these matters, the EU is now clearly the primary source of European law—though even in apparently integrated areas such as agriculture, the environment and other regulatory issues, the bulk of policy discretion may well still be national.

A third category accounts for some 80 percent of legislation and rule-making that remain almost entirely outside the mandate of direct EU policymaking. Issues within this category include the power to set tax rates and fiscal priorities, police law and order, manage national defense, provide local and national infrastructure, set cultural goals and educational priorities, and, above all, and provide health care, pensions, labor market regulation, and social welfare. These functions, many of which focus on redistribution, are today the primary functions of the modern European nation-state. Yet the EU has almost no direct impact on such policies, except through light and sporadic EU regulation under unanimity rule or, in a small handful of cases, through indirect spillover from regulation in other areas.

None of this appears to be changing. Indeed, perhaps the most striking characteristic of recent EU constitutional deliberations since Maastricht, as it was of Amsterdam and Nice, is how little substantive expansion has been seriously considered. The member states agreed upon incremental changes essentially within existing constitutional mandates, or sought to reinforce intergovernmental cooperation in areas such as defense, asylum, law and order, fiscal policy, social policy, or tax harmonization, outside the classic EU institutions. As the constitutional convention convened, the EU had just completed its most successful decade ever, counting among its recent achievements monetary union, two rounds of enlargement, greater transparency, more foreign policy coordination, movement toward EU policies on energy, services deregulation, and other issues. Entirely absent from the constitutional draft was any significant expansion of the EU's substantive mandate. Even in the constitutional convention itself, a forum in which European federalists had a disproportionate influence, less than two days were devoted to consideration of proposals for new policies, during which few were considered and none adopted. What proposed changes were there could surely have been obtained through piecemeal implementation over the five years during which the unwieldy draft was debated. From a substantive perspective, the promulgation of a new constitution was, and remains, unnecessary.

This situation appears stable. The truth is that today no plausible 'grand projet' for Europe can be found—nothing, at least, on the projects that powered major constitutional reform in the past, such as the CAP, the single market, the single

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currency, or the recent enlargement. Polls show that most Europeans are broadly satisfied with the current scope of the EU.⁴

Most of the proposals for inclusion of new issues are more style than substance. Consider, for example, the issue most commonly mentioned as a possible candidate for future communitarization: social policy. The absence of a ‘social Europe’ today is not the happenstance consequence of short-sighted political decisions, but an inevitable result of the structure of national and social interests. No wonder the French and Dutch referenda, like the convention, were devoid of any serious discussion of what a concrete European social policy would look like. To see why European social policy is, and must remain, a chimera, consider four possible meanings for such a policy. None appears viable, and they contradict one another.

Transnational Transfers from Rich to Poor?

Following the egalitarian rhetoric of European socialism, one might expect that a pan-European social policy should mandate resource transfers from rich to poor. This would mean, in the EU context, a system dominated by payments from taxpayers in richer member states, such as Germany and France, to the less advantaged citizens of Europe, most of whom are found in new member states such as Lithuania, Slovakia, and Cyprus. Or, if indirect means were favored, it might mean transfers via the suppression of any barriers to the free movement of workers, goods and services emanating from these countries.

There are almost no concrete proposals for a Europe-wide social policy of this kind, and the governments of richer countries have made clear that they do not wish to increase transfer payments beyond current levels.⁵ Existing national systems remain sacrosanct. The absence of concrete proposals and political support for cross-national distribution is often attributed to a lack of a common transnational culture, language or sense of political identity (*demos*) among Europeans.⁶ A more fundamental reason is probably that redistribution is simply not in the material interest of citizens in the richer polities of Europe: Large

⁴ Poll data is difficult to interpret. Recent polling reveals that the issues where Europeans would most like to see more EU activity tend to be those where there is already action: terrorism, democracy promotion, law and order, R&D, the environment, and health and safety, whereas those where they would least like to see increased EU activity include unemployment, social rights, economic growth, and agriculture, even though the first three of these issues are consistently salient. It also reveals that whereas the new member states would favor social welfare harmonization, this is less popular in the old member states (see European Commission 2006*d*, 2006*e*). Foreign and defense policy have consistently rated high as well.

⁵ To be sure, it is often forgotten that existing EU transfers via structural funding and market liberalization involve a far greater commitment to transnational redistribution than any other advanced industrial democracy—notably the USA—is able to contemplate.

⁶ A comparison of European and German reunification—the former privileging national boundaries, while the latter ultimately granting East Germans social rights as nationals—does suggest that there may be some truth to this.

transfers would impose wrenching distributional shifts and threaten universal national systems that currently enjoy broad domestic support.⁷ Absent a strong functional case for international cooperation—that is, a plausible argument why maintenance or improvement of most existing national policies requires transnational policy coordination—it has never been possible to push European integration forward, and it does not seem to be possible here.

A Coordinated Defense against Globalization?

Some other advocates of a European social policy imagine the opposite of transnational transfers, namely a European social policy designed to defend the current prerogatives of the working class in richer ‘old’ member states against ‘globalization’. Most Europeans appear to favor maintaining current levels of welfare spending, as demonstrated by the opposition encountered by national governments that seek to consolidate spending and its impact on attitudes toward the EU. Prominent among perceived threats are the fiscal erosion of domestic social protection, increased domestic labor flexibility, and immigration of low-skilled workers from ‘new’ member states. Many speak of a regulatory and fiscal ‘race to the bottom’, whereby regional trade, immigration, and investment create strong incentives for countries to reduce welfare expenditure and regulatory standards.

Yet an EU policy designed to meet these challenges cannot claim support either among policy analysts or among governments—for three fundamental reasons. First, there is little empirical evidence of a ‘race to the bottom’ induced by regional integration. To be sure, there is downward pressure on standards in some areas of social policy (pensions, medical care, and labor market policy), but the most important factors driving it appear to be domestic: the shift to a postindustrial economy, lower productivity growth, shifting demand for less-skilled workers, and rising costs of health care, pensions and employment policies, exacerbated by increasingly unfavorable demographic trends (Pierson and Leibfried 1995; Iversen, Pontusson, and Soskice 1999; Scharpf 1999; Rhodes, Ferrera, and Hemerijck 2001; De Grauwe and Polan 2005; Pontusson 2006). Second, current levels of social protection and economic growth are manifestly unsustainable—and thus a defense of existing social policy does not address the true policy challenge facing European governments. There is a near-consensus—accepted at least rhetorically by all member state governments and embodied in the EU’s nonbinding ‘Lisbon Process’—that some reduction in benefits, increase in immigration, and expansion of labor flexibility are required to render domestic systems viable. In this context, any effort to harness the EU to protect current systems of social protection would be futile, if not counterproductive. Third,

⁷ Social welfare systems, which undergird class compromises in European polities, are locked in by historical processes (Pierson 1994).

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given the diversity of existing national social welfare systems, national reform is more appropriate than EU reform. Even advocates of social policy admit that with proper national reforms, social democratic welfare states are compatible with high levels of interdependence—but the reforms required are politically delicate and nationally specific (Scharpf 1999). There is little political or technocratic justification for a ‘one size fits all’ centralized social policy, the costs of which would surely outweigh the benefits.

Offsetting the EU's Neoliberal Policy Bias?

More nuanced social democratic advocates of a European social policy, aware that neither transnational redistribution nor a centralized defense of the status quo is feasible or desirable, argue that an explicit EU social regulation might help offset specific, particularly undesirable or inequitable developments in social policy resulting from existing EU policy. Fritz Scharpf (1999) offers the most subtle, rigorous, and empirically informed formulation of such a position. In this view, unfettered market competition tends to degrade regulatory protection in particular areas. The EU cannot respond effectively to such tendencies, despite overwhelming support for the maintenance of current social protection, because there is a neoliberal bias in the EU's constitutional structure. Unanimity voting dampens redistributive policies, European courts and regulators favor market liberalization (‘negative integration’) over social protection (‘positive integration’), and in certain areas, effective national responses may be blocked either by EU law or by market competition. While reform must be essentially national, the EU should establish legal standards that render national responses more effective and more just. Scharpf points to the need to offset the potential of future ECJ jurisprudence to undermine national public service provision, as well as a tendency to increase the share of taxation on labor. The EU regulation might also help assure that necessary welfare reforms are just as well as sustainable, for example by mandating intergenerational equity (Schmitter 2000).

This argument for an EU social policy is at least plausible, yet it falls short of a compelling case. First, while EU policy biases exist, there is little evidence that they drive social protection downward. The EU often permits, even encourages or mandates, high regulatory protection (Vogel 1993; Joerges and Vos 1999; Scharpf 1999). Scharpf asserts that the member states are trapped in a suboptimal equilibrium, due to supermajoritarian rules—yet he provides no plausible examples of this phenomenon. (Old arguments about agriculture are empirically incorrect (Moravcsik and Sangiovanni 2002; cf. Scharpf 1991, 1999).) Second, even Scharpf concedes that any serious consequences EU law may have for, say, domestic public service regulation, lie in the future. Today there is little reason for a social democrat to fear the piecemeal evolution of European law—indeed, less so than might have been the case five or ten years ago (Scharpf 1999: 121–86). Third, given the failure of national governments to pursue sustainable

social welfare policies, an offsetting neoliberal bias at the EU level may well be justified—as we are about to see. Overall, an EU social policy to block excessive neoliberal reform would be, at most, an extremely modest policy, and is probably premature (Moravcsik 2002).

Neoliberal Reform?

A final conception of EU social policy is one of a neoliberal EU imposing reform, thus counterbalancing unsustainable generosity of current national social welfare and regulatory policies.⁸ In this view, the EU should not defend national social welfare and labor market systems, but bolster international competitiveness and long-term sustainability by compelling states to reform. This view has the virtue of being consistent with current national policies and expert policy analysis, as well as the ongoing ‘Lisbon process’ of EU information coordination in social policy.

While these are worthy goals, there is little reason to believe that the EU has any comparative advantage in achieving them. First, as we have seen, the diversity of national social welfare systems and the national social compromises they embody means that the regulatory requirements of reform are different in each member state. From a technocratic point of view, there is widespread agreement that national governments should take the lead in this matter—and that such efforts can be successful (Scharpf 1999). Second, even if pan-European social welfare reform could work technically, it would be perceived as illegitimate—as was the case with the pan-European distributive schemes considered above. This is surely why the member states have opted in this area for the ‘Open Method of Coordination’ (OMC), which provides technical assistance, but no binding central regulation (Zeitlin, Pochet, and Magnusson 2005).

If social policy appears to be unpromising as an avenue for substantive cooperation, an area with a stronger functional justification may well be foreign and defense policy. The EU already coordinates European foreign policies with regard to most civilian international organizations, including the World Trade Organization (WTO) and the UN—in the latter case only Security Council matters are largely exempt. The EU enlargement is a major tool. Yet national foreign policies on other matters can be uncoordinated or contradictory, as the oft-cited cases of Bosnia and Iraq illustrate. In defense affairs, in particular, EU member states maintain redundant, suboptimally sized, and uncoordinated procurement and deployment policies. European governments—with over 100,000 troops deployed out of their home countries—are stretched tight (Everts et al. 2004). Centralized EU policymaking is often proposed as a way to support a larger global role for Europe. Even if the most ambitious plans currently on the table for a European force were fully realized—which few expect to see—the EU would oversee only

⁸ As early as 1995, Pierson and Leibfried noted that this would be the likely content of any European social policy.

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2 percent of European NATO forces. To many, this constitutes a prima facie case for greater coordination, perhaps through the EU.

Yet the binding constraint on more effective foreign and defense policy coordination appears less to be unwillingness to coordinate policy and share sovereignty per se (though such inhibitions surely exist), but rather the lack of sufficient functional incentive for individual governments to devote resources to effective national policies. Europeans are constrained at the margin more by the willingness to deploy coercive forces than their availability or coordination of such forces.⁹

There are a number of reasons for this lack of enthusiasm. First, traditional external military threats are perceived to be modest. Even the cold war created an insufficient motivation to coordinate military spending; today the pressure is far less. The EU declaratory policy speaks of humanitarian, peacekeeping, and peacemaking intervention, yet we may doubt how important this goal is to European governments. Europeans reject greater coordination of foreign and defense policy not simply (or even at all) because the issue area is essential to national identity and sovereignty, but because the benefits are insufficient to justify costly domestic adjustment—even if there are good policy arguments in their favor. Second, costly transformation of domestic military establishments—the shift to all-volunteer forces, more efficient procurement, reorientation toward new scenarios for the use of forces and, for some, an ideological shift away from neutrality—is slow and difficult. Third and most important, Europeans have strong ideological and institutional reasons to remain skeptical of military solutions to global problems. They prefer to invest in civilian power: expanding the EU, promulgating trade policy, dispensing foreign aid, promoting international law and organization, and focusing on low-intensity military operations. There is substantial cooperation in these areas, and European civilian power is arguably more cost-effective than military might. Since the end of the cold war, for example, enlargement of the EU has proven itself the most cost-effective instrument for spreading peace and security available to Western nations (Moravcsik 2003).

Even where European governments do face strong incentives to coordinate military policies, the argument for major constitutional reform appears weak. Intergovernmental cooperation backed by bi-national efforts appear to work well. In this regard, the oft-cited case of Iraq is quite misleading. Would European policy have been substantially different with greater coordination? In fact, there are few, if any, examples since (perhaps) the decision to recognize former Yugoslavian states in the early 1990s when EU member states would have voted by qualified

⁹ A failure of domestic adjustment, not of international coordination, appears to be the critical constraint. National procurement policies are flatly inconsistent with supposed military strategy. France, for example, though a strong supporter of European defense cooperation, procures nuclear weapons, fighter jets, aircraft carriers, and other expensive weapons suited to unilateral responses to cold war threats.

majority, or even simple majority, for more effective policies than those they actually pursued through existing unilateral or intergovernmental means. Recent diplomacy over Iran or Lebanon may be more appropriate exemplars. Military planning within the intergovernmental Council is proceeding. This is why realistic proposals currently under consideration to develop a EU defense or foreign policy identity take the form of strengthening intergovernmental cooperation within the Council of Ministers, rather than radical constitutional change to import the classic 'community method' into this area. Had the draft constitution been adopted, it would in fact have centralized decision-making and shifted power from the Commission to the more intergovernmental Council, not the reverse.

We have seen that there is currently little functional pressure for major constitutional change in areas like social and foreign/defense policy, beyond the incremental change currently underway.¹⁰ To be sure, future exogenous shocks, or even unforeseen spillovers from existing policies, may create opportunities for 'grands projets' that decisively expand the substantive scope of European cooperation.¹¹ It is not unlikely that, for example, certain aspects of defense or immigration might someday generate pressures strong enough to motivate governments to expand the scope of integration. Today, however, neither a severe unmet need for centralized regulation in Europe nor even significant movement in favor of concrete steps to deepen functional cooperation is in evidence. The trend is rather toward a stable substantive division of labor between national and European competences.

The Institutional Dimension of the European Constitutional Settlement

Stable limits on the substantive scope of EU policymaking do not simply reflect the absence of appropriate functional imperatives. They are reinforced by the basic constitutional structure of the EU. The Treaty of Rome has long provided the EU with a de facto constitution, defining the relationship between member states and Brussels, the separation of powers among institutions, a stable process of legislation and adjudication, and the interaction between citizens and political institutions.

In most particulars, the EU's existing constitutional structure is confederal, rather than federal—at least in the classic sense we recognize from national

¹⁰ For an analysis of immigration policy, which appears equally unpromising, see Guiraudon (2004) and Moravcsik (2006: 225).

¹¹ Promising issues surely exist. Perhaps fiscal policy coordination among Euro countries, antiterrorism policy, or the General Services Directive would be useful places to seek unintended or unwanted spillovers of significant size. Yet even in these areas, few analysts see a medium-term prospect of centralizing policy in Brussels, and even if they did, it is unclear that a major change in the treaty basis of the European Union would be either desirable or practical.

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governmental experience (Elazar 2001; Majone 2005). These confederal characteristics of the EU run deep, and are deepening over time. In the historical process of state formation, adequate state capacity has been an important prerequisite for policy innovation. Yet the EU does not (with a few exceptions) enjoy the power to coerce, administer, or tax (Moravcsik 2001). Most of the important substantive areas of modern governance remain firmly in the hands of national governments, to be extended only by unanimous vote of the member states. Nation-states dominate the relationship between citizens and the EU, and impose extremely tight institutional constraints on political decision-making in the EU—deciding only by concurrent supermajority (in practice, near consensus). These narrow institutional constraints render almost impossible any expansion of centralized EU decision-making into most of the significant new issue areas, which would require substantially greater state capacity. Let us consider political, coercive, fiscal, and administrative capacities in turn.

Political Capacity

The EU's ability to act, even in those areas where it enjoys legal competence, is constrained by the checks and balances between member states and Brussels, and among the Brussels institutions themselves. The EU is not a system of parliamentary sovereignty but one of separation of powers, with political authority and discretion divided ('horizontally') among the Commission, Council, parliament and court, and ('vertically') among local, national, and transnational levels. For legislation to pass, the Commission must propose (by majority or consensus), the Council of Ministers must decide (by supermajority vote), European parliamentarians must assent (by absolute majority of members), national parliaments and officials must transpose directives into national law, national bureaucracies must implement them, and, if the result is challenged, the domestic and European courts must adjudicate. Formally, this makes everyday legislation in the EU as difficult to enact as a constitutional amendment in the USA. For EU constitutional change, unanimity is required, often with ratification by referendum in at least some of the member states, and by at least parliamentary vote in all—a standard higher than any modern democracy except perhaps that of Switzerland.

Such a system is deeply resistant to any fundamental transformation without consensus among a wide variety of actors. As a result, the EU tends to tolerate internal diversity, rather than forcing common solutions. Thus the single currency, the Schengen arrangement, and foreign policy cooperation—to name just three examples—tend not to bind all members of the EU to a common standard, but to permit a level of internal flexibility unheard of in modern national governance. One sees this even in everyday legislation, where carefully crafted compromises

and local implementation tend to generate considerable flexibility.¹² Radical change in such a system is unlikely.

Coercive Capacity

Traditionally, the preeminent international characteristic of a state has been its capacity to coerce. Yet the EU has no police, no army, no significant intelligence capacity—and no realistic prospect of obtaining any of them. This constraint restricts the EU's autonomous ability, without the active and, in some cases, unanimous, support of the member states, to conduct external coercion or internal policing. The EU forces could be employed only for a narrow range of peacekeeping tasks, and with the unanimous consent of the participating national governments engaged in the operation. This 'coalition of the willing' approach is no different than that of NATO, a classic international organization. To be sure, coordinated military planning and some rationalization of defense procurement are possible, and the EU may be helpful here—but almost no one envisages the EU thereby gaining control over military action or spending. Similarly, although the EU helps to coordinate efforts to combat international crime, the structure of national police, criminal justice, and punishment systems remains essentially intergovernmental. The convention revealed little significant support for a more centralized defense structure.

Fiscal Capacity

Redistributing wealth by taxation and spending is the preeminent activity of the modern state, yet the EU does little of this. Its ability to tax is capped at about 1.3 percent of the combined GNP of its members—representing only about 2 percent of European public spending (as compared to the US federal government, which collects 70 percent of American tax revenue). The EU funds are transfers from national governments, not direct taxation; their disbursement is directed to a small range of policies like the CAP, structural funding, and development aid. Little room exists for discretionary spending by Brussels technocrats, or spontaneous shifts in funding by the member states. Unanimous consent is required to change any of this, and in recent years, wealthier member states have blocked efforts to expand EU fiscal capacity. Even in areas of the EU's greatest fiscal activity, most public funding remains national. Agriculture is often thought of as a purely EU

¹² Consider e.g. the controversial EU directive on chocolate, finally agreed several years ago after twenty-seven years of discussion. It permits chocolate products with up to 5 percent vegetable oil to circulate within the EU, yet countries are allowed to alter the labeling of such products (e.g. 'chocolate', 'family milk chocolate', or 'pure chocolate'), which reportedly have a considerable impact on consumer behavior. Implementation is expected to be slow (Confectionery News 2005; Stiff 2006).

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function, carried out by the CAP. Yet even in France, the largest beneficiary of the CAP, national sources provide more than half of French farm spending—often enough to counteract EU influence where desired. The EU is thus condemned to remain what Giandomenico Majone has termed a ‘regulatory polity’—a political system with instruments of regulation, but little fiscal discretion (1996).

Administrative Capacity

The essential power of the modern state resides not just in its capacity to coerce and to tax, but also in its capacity to administer—that is, in the discretion officials and politicians wield over detailed regulatory implementation and adjudication. Though European bureaucrats can be as frustrating to deal with as any others, the notion of a European ‘superstate’ swarming with Brussels bureaucrats is a delusion (or a deception) of Euroskeptics. In Europe, the power to administer remains largely national, even in areas where European regulation is extensive—outside a few exceptional areas. The EU simply lacks the capacity to do so, since its workforce numbers less than 30,000, of which only around 5,000 are genuine administrative decision-makers—employment no larger than that of a medium-sized city government. This constitutes about one-fortieth of the civilian federal workforce in the USA, even with its smaller population and lower level of government employment. With so little manpower, the task of implementing EU regulations therefore necessarily falls to national parliaments and officials.

The EU trend is not toward centralization, but instead toward a ‘pillarized’ structure, in which new issues have tended to be handled by bureaucratic networks centered in the Council of Ministers and the European Council. In traditional EU issues, the Commission’s agenda power has increasingly passed to the European Parliament (EP) and the Council, acting jointly. Important exceptions to the norm of administrative decentralization are limited to a handful of independent EU functions, including constitutional adjudication in the European Court of Justice (ECJ), monetary policy in the European Central Bank, and prosecutorial activities of the Commission in competition policy. These exceptions are important, but we would nonetheless do well not to exaggerate their importance. These are areas where, for good policy and normative reasons, power is customarily insulated even in national settings.

Recent constitutional deliberations underscored the stability of existing constraints on political, coercive, fiscal, and administrative capacity. Notwithstanding its high-minded Philadelphian rhetoric, the proposed draft consolidated, rather than fundamentally reformed, the ‘European constitutional settlement’. Few in recent constitutional debates called the EU’s essentially confederal structure into question. The claim that Europe would need a radical overhaul to avoid gridlock with twenty-five rather than fifteen members was always more pretext than reasoned motivation. Some claimed a simplification of existing

treaties would render them more popular, yet the notion of a simple ‘American-style’ constitution barely survived the first day of constitutional deliberation. (And rightly so, since there is little reason to believe it would have been perceived as more legitimate.) Some claimed that more democratic participation was required, yet in the draft did little more than prolonging an incremental shift in intrainstitutional power that has been underway for over two decades by modestly extending involvement by the EP and the Council of Ministers involvement at the expense of the Commission. Absent a redesign of its structure far more fundamental than anything seriously proposed by even the most radical critics during the recent episode of constitutional debate, EU institutions are likely to remain essentially what they are today.

The Ideological Dimension of the European Constitutional Settlement

In recent years, Europeans have come to believe that the EU, even if functionally and institutionally secure, may be ideologically unstable. In this view, the central danger facing the EU stems from its lack of popular support, trust, and legitimacy. Advocates of this view refer to the modest decline over the past decade in poll support for the EU, and the slowing pace of expansion of EU policymaking into wholly new substantive areas. Public skepticism might be understood as yet another reason why the EU is unlikely to undertake more ‘grands projets’ in the near future. But many fear also that the EU will become unstable and ungovernable, thereby calling into question not simply the capacity for further integration, but its current achievements. This unpopularity is often attributed to the EU’s lack of direct democratic mandate.

This formulation of the ‘bicycle theory’—the folk wisdom that if the EU does not continue moving forward, it will collapse—was the primary argument underlying the constitutional project, which otherwise had little substantive or legal justification.¹³ The constitution was, from this perspective, primarily an exercise in *public relations*. Its main purpose was to surmount the perceived ideological crisis of legitimacy in the EU by increasing trust and support among the general European public, which it sought to achieve by bolstering the EU’s democratic credentials. As the mandate to the European convention of the 2001 Laeken Declaration stated: ‘Within the Union, the European institutions must be

¹³ The reforms contained in the draft constitution were, to be sure, pragmatic and desirable adjustments to the existing EU constitutional structure. They would have clarified bureaucratic responsibility for foreign policy, streamlined presidential leadership, reweighted national voting in favor of larger countries, expanded the use of majority voting and parliamentary codecision, and altered procedures for further enlargement. Yet these are modest improvements in the existing structure, not major reforms—much less anything that amounts to a wholly new ‘constitution’.

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brought closer to its citizens' (Ludlow 2002). The alternative, critics hinted darkly, would be stagnation, disintegration, or collapse. Supporters of the constitution continue to this day to argue for this course. Europeans must now earnestly engage in an extended 'reflection period', await elections and political renewal in Germany, France, and Britain, then relaunch the draft constitution (Duff 2006).

The claim that the constitution would help combat ideological disaffection was widespread, yet rarely analyzed in detail. Closer inspection reveals that it rests on three premises, none of which appears to be empirically valid:

1. The EU has lost popular trust and legitimacy;
2. The EU is now irrevocably politicized and thus faces the danger of a populist backlash; or
3. Further democratization of the EU would increase public deliberation, and thus restore popularity, trust, and perceived legitimacy.

Let us analyze each (this section follows Moravcsik 2006).

Is the EU Perceived Today as a Particularly Untrustworthy or Unpopular Institution?

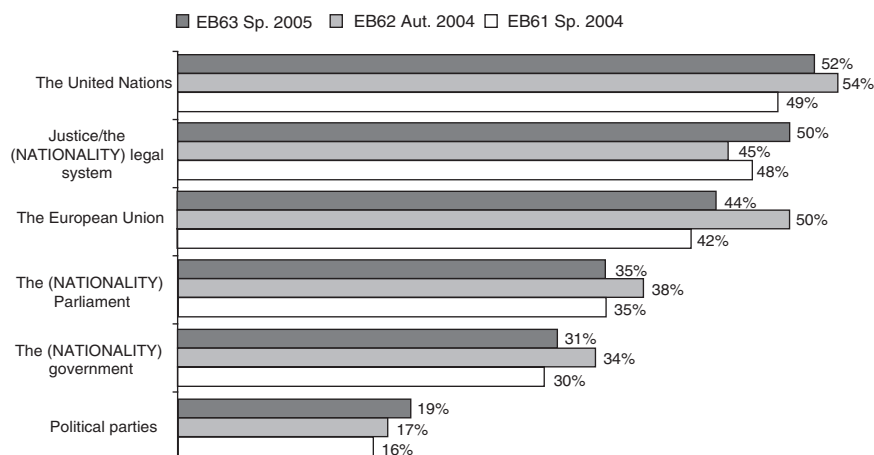
Many believe that the EU, by virtue of its purported distance and unfamiliarity for the average citizen, its supposed lack of direct democratic deliberation, and its apparently elitist and technocratic style of governance, is widely viewed as untrustworthy and illegitimate. Citizens who voted no in the referendum, it is argued, must have thus been opposed to the specific content of the constitution or the general tendency of European integration.

Yet polls do not support this view. A strong and stable majority of Europeans supports EU integration, something that the constitutional process appears to have obscured, even undermined, rather than reinforced. For the last decade, just over 50 percent of Europeans have felt EU membership is a good thing, about 30 percent have been neutral, and only 15 percent have felt it is a bad thing. This number has declined, though modestly, over the past five years. Support for the constitution initially declined in the wake of the referendum, though it has now increased: 63 percent of Europeans continue to support the idea of a constitution, compared to 21 percent who oppose the idea—stronger support than in the spring of 2005, before the referendum. In no country do opponents outnumber supporters. And an even larger majority of Europeans supports the most important substantive reforms contained in the constitution such as the strengthening of foreign policy coordination (European Commission 2006*d*, 2006*e*).

Nor is there empirical evidence that Europeans in large numbers are fundamentally dissatisfied with EU institutions. The French and Dutch referenda, like every other election or referendum ever held on the EU, were dominated by

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GRAPH 2.1. Institutional trust among EU-25 publics (2004–5).

Note: Percentage 'Tend to Trust'.

Source: Eurobarometer 61, 62, 63.

extraneous issues. An apparently pro-constitution, pro-EU majority on the issues did not assert itself. Motivations for opposition appear to have had little to do with the constitution's content or, for the most part, with the EU at all—but overwhelmingly expressed general concerns about social spending, fears of globalization, dislike of the sitting government, opposition to third-country immigration, and perhaps skepticism about future Turkish accession.¹⁴ This 'disconnect' between issue preferences and electoral behavior has been consistently evident in patterns of support for or opposition to the EU. This, we shall see, is generally in situations where the issues handled by the institution are not highly salient, or run parallel to other existing institutions and cleavages.

The underlying claim that EU institutions lack political legitimacy, and are thus unpopular, is also belied by the evidence. The closest proxy for legitimacy is probably 'trust'. Poll data reveal a level of skepticism about both the EU and about political institutions in general, but the EU and the EP (as well as the United Nations) are clearly more trusted by Europeans than national parliaments and governments (Graph 2.1). Political parties, those essential intermediaries of any modern electoral process, score the lowest trust and popularity of any political institution.

In sum, there is little evidence that whatever legitimacy crisis may exist in Europe attaches particularly to the EU, or is in any way related to levels of democratic participation.

¹⁴ Debates on this issue are continuing. It is agreed, however, that the content of the constitution played almost no role in voting, and EU matters a secondary role. For a range of views, see the symposium edited by Sbragia (2006).

40 *The Past and Future of European Institutional Integration**Is EU Policymaking Irrevocably Politicized, such that it Faces the Danger of a Populist Backlash?*

Critics of the EU's 'democratic deficit' often invoke the specter of a populist backlash against the EU. In this view, the expansion of EU policies over the past two decades has irrevocably politicized the organization.¹⁵ The public has taken an interest, and now it must be satisfied. If the EU does not undertake major constitutional reform, and in particular redress the 'democratic deficit' by increasing participation, many argue, it will regress or collapse.

The available empirical evidence disconfirms this view. Far from being incensed and mobilized about Europe, citizens are largely apathetic—as they always have been. Over the years, European citizens have resolutely refused to avail themselves of existing institutional opportunities to participate in EU politics. Not since farmers deserted Charles de Gaulle during the first round of the French presidential elections in 1965–66 has an EU issue played a decisive role in the national election of a west European member state. (Even then, the effect lasted only a few weeks.) This is not because they ignorantly underestimate EU influence. Polls tell us citizens are fully aware of—indeed perhaps exaggerate—the increasing importance of the EP, and yet they turn out for European elections in low and declining numbers—something many scholars find baffling (Blondel, Sinnott, and Svensson 1998). Some interest groups do mobilize mass protest around EU policies (with protest directed largely at national governments) but their propensity to do so has not increased with increases in the perceived importance of the EU (Imig and Tarrow 2001: 235). Thus it should have come as no surprise that the EU—at least until the misguided referendum at the end—did not engage or mobilize European publics.

To judge whether this apathy is likely to persist, or whether it is likely to change suddenly into organized angry opposition, as supporters of democratizing the EU assert, we must understand its root causes. There are a number of reasons why European citizens fail to participate or seriously deliberate about EU politics. Here I consider only one such reason—arguably the most important among them—namely that the issues dealt with by the EU are far less salient to the public than issues dealt with by national governments.

Political scientists accept that political learning, mobilization, deliberation, and participation are expensive for rational citizens, and thus the bulk of the electorate holds only a small number of major issues in their minds at a time. The resulting number of salient partisan cleavages in Western democracies is relatively few. Any mass politicization of the EU would require first that existing national (or personal) concerns, currently of greater importance in the minds of citizens, be swept aside to make room for EU issues.

¹⁵ An intelligent, if not entirely consistent, statement of this position has been advanced by Hooghe and Marks (2006).

It is hard to see why rational European citizens would want to do this. The issues the EU deals with most intensely—trade, industrial regulation, technical standardization, soft power projection, foreign aid, agricultural policy, infrastructural, and general foreign policy—are not salient issues for the mass public. Data on the fourteen most salient issues in the minds of European citizens reveal that only one issue, the environment—which ranks only twelfth in salience, with 3–4 percent of the public placing it among the top two issues—is a major focus of EU legislation.¹⁶ Even in environmental policy, the EU is involved in only a subset of policies.

The issues publics care about most remain overwhelmingly national. On the list of the fourteen, six (health care, pensions, taxation, education, housing, and transport) provide little role for the EU. Another seventh area, law and order, is subject only to modest intergovernmental information sharing and coordination. Two more issues, foreign and defense policy, remain traditional intergovernmental issues dominated by national policymaking and hedged with unanimity and opt-outs, rather than areas of genuine EU competence. (And their role remains relatively minor, as we have seen.) Yet another issue, third-country immigration, may become a potentially important EU activity in the future, but it is not today.¹⁷

This leaves three highly salient macroeconomic issues: unemployment, inflation, and ‘economic conditions’. At first glance these concerns seem to be closely related to the EU, due to the activities of the European Central Bank. They could potentially also be the subject of action under the so-called ‘Lisbon strategy’ and the OMC. Yet this does not make them potential catalysts for electoral mobilization against the EU. The link between monetary policy and macroeconomic outcomes remains obscure, and in any case, the ECB (like EU national central banks) is an independent body. For both reasons, its proper connection to political participation is unclear. Short of a crisis, in which withdrawal from EMU becomes a serious option, it is hard to imagine monetary policy becoming a salient electoral issue in any national polity—nor even precisely what it would mean if it did. Most policy analysts believe instead that today the most influential and most policy-relevant instruments for influencing macroeconomic performance (unemployment and ‘economic conditions’, if not necessarily inflation) are instead fiscal, labor market, and education policies—all of which remain essentially national. Certainly these policies are also more visible and controversial among voters. Fiscal policy lies outside the EU’s mandate, while labor market policies—with

¹⁶ The top fourteen issues in the minds of European citizens are in declining order of importance: unemployment, the (macro-)economic situation, crime, health care, inflation, immigration, pensions, terrorism, taxation, education, housing, the environment, transport, and defense/foreign affairs (Eurobarometer 63).

¹⁷ The case of asylum—a hot-button issue in countries such as the UK, and thus somewhat exaggerated in EU scholarship—involves obligations under international law adjudicated, insofar as the mechanisms are regional, largely by the Strasbourg court of the Council of Europe.

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the odd exception of gender policy—are subject only to discussion under the OMC. Yet, as we shall see below, there is no evidence that the OMC has had any significant impact on national policy. Meaningful discretion over macroeconomic management remains an essentially national affair.

As long as voters view the matters handled by the EU as relatively obscure, they have little incentive to debate or decide them. The limited time, money, and energy of European citizens do not permit a wholesale shift of attention and attachment to EU matters.¹⁸ There is little evidence that this will change on its own. Spontaneous mobilization against Europe is therefore unlikely to occur. Publics are likely to become involved only if efforts are made to frame issues in a way calculated to mobilize them—and the results of that, we are about to see, are perverse.

Would Further Democratization of the EU Increase Its Popularity, Trust, and Legitimacy in the Eyes of European Publics?

The ideal of the constitutional project as a public relations exercise aimed at ‘bringing Europe closer to the people’ rested on the belief that it would trigger a mass constitutional debate, which would inform and engage citizens, thereby transforming the EU’s symbolic politics, rhetorical framing, and political culture. Rather than seeking public support by securing mutually beneficial economic and regulatory advantages, the EU should mobilize publics to debate the ‘finalité politique’ of Europe. In doing so, citizens would come to understand and appreciate the EU more fully, thereby reshaping the content of public debates and reversing the EU’s sagging popularity. Some participants—not least a number of European parliamentarians—also viewed the constitutional convention as an optimal opportunity to exercise behind the scenes influence in a profederalist direction (Interview 2003).

Those who remain committed to the constitutional project say that mistakes were made. The constitution failed because it was insufficiently inspirational, or because it fell victim to opportunistic national politicians. Referendums were opportunistically called, ineptly waged, and, in two cases, decisively lost. For some, this demonstrates the validity of the basic premise underlying the constitutional project—namely that the EU is crippled by its ‘democratic deficit’, ‘legitimacy crisis’, and lack of a common vision of its ‘finalité politique’.

Yet this is to miss the central lesson of the constitutional debacle. Judged by the goal of inspiring citizens to informed deliberation and generating political support, the constitution was a failure from the beginning. And failure was

¹⁸ This is not to deny that EU issues are important, normatively or positively. In an ideal world, we would surely wish citizens to participate in EU politics, and every other kind of politics, more enthusiastically. But the real world imposes trade-offs—a fact of pragmatic and normative importance.

inevitable because the basic strategy on which it was based is inconsistent with our *basic empirical knowledge of modern democratic politics in general*. For such a strategy to work, three premises must be correct:

1. Expanded institutional opportunities for political participation must generate more popular participation;
2. More participation must generate more informed public deliberation; and
3. More deliberation must generate greater political trust and legitimacy.

None of these three claims is generally valid, and each is least likely to obtain in political environments resembling the EU (this section follows Moravcsik 2006).

Again, the critical structural factor is the absence of salient issues, which renders a ‘public relations’ approach to the EU futile, because publics have little rational incentive to pay attention or mobilize. The problem in the EU is not the absence of political opportunities to participate. National elections, EP elections, rules requiring regulatory input, and support for interest groups exist. Cross-national research reveals that EU regulatory procedures are as transparent and open to public input as the best practices of national governments (Zweifel 2002, 2006). The EU officials have limited scope for arbitrary discretion. Elected national governments and elected European parliamentarians increasingly dominate EU policymaking. Disputes and voting within the EU reflect the same national interests and left–right cleavages visible in national politics. The issues the EU handles are roughly those that European publics would like to see handled. The erroneous view that the EU suffers from a greater ‘democratic deficit’ than its constituent member states, a foundational presumption of the constitutional project, stems largely from the fact that it deals disproportionately with issues commonly delegated or insulated in modern democratic politics. The problem is not that citizens cannot influence the EU; it is rather that *they do not choose to become involved*. (For a detailed analysis, see Moravcsik 2002).

Forcing the issue onto the agenda via a constitutional convention and referendum is counterproductive. This is the deepest lesson of the constitutional episode: from the very beginning with the Laeken Declaration—not simply at the end in a set of mismanaged referenda—the constitution utterly failed to inspire, engage, and educate European publics. The absence of any necessary link between institutional opportunities, informed political participation, and political legitimacy will defeat any effort to mobilize support for the EU in this way. In the end, if forced to be involved, the response of a public without rational incentives to participate, is likely to be ignorant, irrelevant, and ideological.

- *Ignorant* because individuals have no incentive to generate sufficient information to render concrete interests and political behavior consistent. As we see from the fifty-year track record of EU referenda, elections, and conventions, the result is an information-poor, institutionally unstructured, and

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unstable plebiscitary politics. Ignorance about the EU remains stubbornly high. Few citizens were aware of the 200 conventionners' deliberations, and at the end of the process, few could state what was in the resulting document. Constitutional aspirations and democratic reform seemed to have little effect on public knowledge (Brouard and Tiberj 2006; Norman 2003).

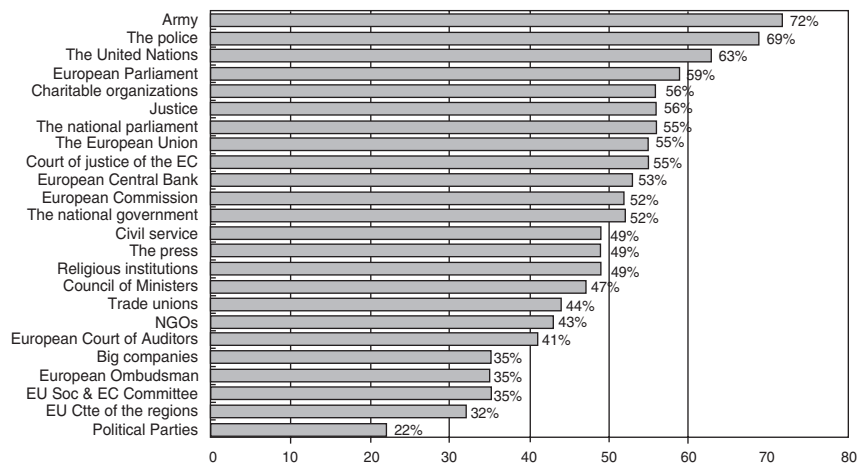
- *Irrelevant* because publics are likely to react to efforts to stimulate debate on nonsalient issues by 'importing' more salient national and local (or global) issues with little to do with the matter at hand (in this case, EU policy). Elections to the EP are routinely turned into 'second order' elections in which concerns about national governments—or, more recently, issues handled by national governments—are aired. No wonder the referendum debates were dominated by issues unrelated to ongoing EU policy, including third-country immigration, the exchange rate at which the Dutch government had decided to enter EMU, social welfare reform, and general fears of globalization. Even the few EU issues that were discussed, such as Turkish membership, had little to do with the constitution itself.
- *Ideological* because intense efforts to stimulate electoral participation in EU matters tend to encourage symbolic rather than substantive politics. Polls show that, absent strong preferences about EU policies, feelings about the 'idea' of EU (i.e. general pro- or anti-Europe sentiment) dominate the European sentiments of many voters. The result is that electoral politics, insofar as it is focused on the EU at all, is quickly dominated by symbolism and rhetoric. This, in turn, plays into the hands of small bands of active Euroenthusiasts and Euroskeptics, who are likely to dominate any popular debate with ideological appeals to nationalist or antinationalist sentiment.

None of this is conducive to the sort of informed discussion sought by European constitutionalists—and deliberative democratic philosophers. It only made manifest the paternalistic utopianism underlying the continued insistence by advocates of pan-European democracy that citizens will pay the high costs of informed participation, even though they do not share the dedicated policy wonk's enthusiasm for the EU's relatively arcane and obscure set of concerns. It is thus unsurprising—and was indeed predicted by some—that the effort to achieve legitimacy through constitutional engineering on the basis of these premises would fail, and that advocates of constitutional reform have been consistently disappointed by the apathy, and the subsequent hostility, of national publics toward the constitutional project.

An even more fundamental error was the belief that *even if* citizens could have been induced to participate and discuss EU issues, they would have come to like and trust the EU. This rests on a basic misunderstanding of democratic politics today. *Majoritarian and populist politics is not legitimating*. Publics in almost all advanced democracies distrust and dislike majoritarian, participatory

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GRAPH 2.2. Institutional trust among EU-15 publics (2001).

Note: Q34 and Q26: 'I would like to ask you a question about how much trust you have in certain institutions. For each of the following institutions, please tell me if you tend to trust it or not to trust it?'

$n = 15.939$.

Source: Eurobarometer 56.2 (October–November 2001, cited in Norris 2001).

institutions such as legislatures, political parties, and elected politicians; they like and trust *insulated* institutions—armies, police, constitutional courts, and administrative bureaucracies, for example—far more. The same holds for international institutions, which is why European publics trust EU institutions as much—often more so—than national ones (Graph 2.2). The EU's position in the institutional division of labor involves such political functions. Criticizing Commission bureaucrats may be an effective rhetorical tactic, but there is little evidence that the bureaucratic nature of the EU actually generates skepticism of it. Nothing suggests that a 'political' judiciary or administration would be more popular. Even if constitutional deliberations had been more intense, or the resulting reforms more populist and participatory, political legitimacy would be unlikely to have been the result.

The following conclusion is inescapable: To give Europeans a reason to conduct informed debates on EU politics, and to support its activities overwhelmingly, more than expanded institutional opportunities to participate and a public relations offensive is required. In order to inspire the redefinition of existing political identities, familiarity with an entirely new set of institutions, new patterns of cleavages and alliances, and the formation of new civil society organizations, one must overcome the rational disinclination of citizens to attend to politics, educate themselves, or mobilize to construct discourses, institutions and political cleavages. To motivate such a shift, publics must have a salient concrete stake in

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the outcome—a basic prerequisite that many philosophically inspired discussions of a demos, ‘we-feeling’, ‘community’, and ‘constitutional patriotism’ consistently elide. To deepen public involvement and bolster legitimacy, one needs to introduce into the EU mandate issues that rank among the most important priorities of European citizens. This is how democratization took place in the past, and this is how it is most likely to occur today (Schmitter 2002). So we are back to functionalism.

There are those, notably social democrats like Jürgen Habermas and Philippe Schmitter among them, who believe that the EU should respond to this challenge by incorporating the issue most prominent in the minds of Europeans: social welfare policy. We have seen above that there is little functional case for a centralized EU social policy. Habermas takes a quite philosophical view of that, discussing shared values with little reference to policy proposals at all—as if ideal discourse could effortlessly trump the strongest interests in modern democratic politics (2001, 2005). Schmitter (2002) realizes that something more concrete is required. With the aim of improving EU democracy, he advances three ‘modest proposals’ to render EU politics more salient:

1. Replace agricultural support and structural funds with a guaranteed minimum income for the poorest one-third of Europeans;
2. Rebalance national welfare systems so as not to favor the elderly; and
3. Grant third-country immigrants and aliens full rights.

With the EU acting as a massive engine of redistribution, Schmitter maintains, individuals and groups would reorient their political behavior on whether they benefit or lose from the system—thereby creating support.

Such proposals for a strong redistributive European social and immigration policy have the virtue of actually addressing the core of the problem, the absence of salient issues. Moreover, they do so—as one might expect from a scholar like Schmitter—in a way informed by what we know from the history of European democratization and political cleavages. There is, moreover, little doubt that such policies would mobilize Europeans. The problem with introducing transnational redistribution, immigration, and generational politics to the EU’s portfolio is that, as we have seen above, they lack a functional justification. Thus, such proposals divide Europeans, both within and among nations, more than unite them. It is difficult to see why issues that encounter (currently prohibitive) domestic opposition in national politics could be resolved at the multinational level. Massive redistribution to east Europeans, third-country immigrants, and the young would generate widespread hostility, particularly in richer countries. This would be likely not only to kill any specific policy initiatives, but to introduce an ugly ideological streak to European politics that has not been seen (at least in the center of the political spectrum) in several generations. Schmitter’s own presentation of such notions as ‘modest proposals’ suggests that he may not himself believe they are viable. More

generally, such ‘cart before the horse’ strategies of generating procedural propriety and public popularity by manipulating policies—particularly policies that lack (we have seen) a substantive justification for communitarization—are difficult to justify either normatively or pragmatically. Even if it were feasible, such a radical break with the existing European constitutional settlement, divorcing the EU entirely from its ostensible purpose of regulating cross-border externalities, would be counterproductive. An ideal deliberative discourse based on shared social values, as Habermas imagines, would emerge in such circumstances only at the expense of comity and consensus among EU member states.

Implications of the European Constitutional Settlement

We have seen that the EU has quietly struck a ‘European constitutional settlement’. Barring a very large exogenous shock, it is unlikely to be upset by functional challenges, autonomous institutional evolution, or demands for democratic accountability. Contrary to what Haas and Monnet believed, the EU does not (or no longer needs to) move forward to consolidate its achievements. This is good news for those who admire the European project. When a constitutional system no longer needs to expand and deepen in order to assure its own continued existence, it is truly stable. It is a mark of constitutional maturity. We should celebrate rather than criticize the EU’s stability. The EU is now older than most existing democracies. Its multilevel governance system is the only distinctively new form of state organization to emerge and prosper since the rise of the democratic social welfare state at the turn of the twentieth century—and it works remarkably well. We learn far more by viewing the EU as the most advanced model for international cooperation, a vantage point from which it appears as an unambiguous success story, rather than as a nation-state in the making, which encourages cycles of overambition and disappointment. The failure of the constitution is not a failure for Europe as much as a failure to renew an outdated discourse of integration.

The undue attention lavished on constitutional reform in the last five years, and its ultimate failure, signals not only a political failure, but a scholarly one as well. For recent scholarship on the EU has tended to neglect the essential elements and the overall stability of the ‘European constitutional settlement’, with its deep grounding in the functional preferences of national governments and their citizens, while encouraging students and scholars to think in terms of teleological movement toward ‘ever closer union’, centralized federal institutions, and a structural democratic deficit that must be overcome.¹⁹ I conclude by briefly considering each.

¹⁹ This is not universal, as we see not only from the work of Majone, Weiler and others, but from Kelemen and Heisenberg’s sensible contributions to this volume—though even Kelemen cannot resist concluding with a few quibbles about whether federal systems really can be constitutionally stable.

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First, recent scholarship *exaggerates teleological tendencies toward 'ever closer union'*. Over the past decade, the successors of Haas have stressed various unintended institutional consequences of the European legal system. Obviously theories about endogenous causality, supranational entrepreneurship, and unintended spillovers offer important insights into European integration. Yet labels, such as 'neo-functionalism' or 'historical institutionalism', suggest general accounts of integration, and thus directly compete with rationalist accounts that stress the intended government responses to exogenously shifting patterns of policy interdependence—even though analyzes of unintended consequences and endogenous causes characteristically lack the empirical power to generalize beyond specific areas to which they have been directed to integration as a whole. Such scholarship also exaggerates the role of institutions. For instance, we learn from the scholarly literature on the ECJ that among the singular preconditions for the evolution of the EU legal system were the existence of autonomous domestic courts with an incentive to recognize the European law, an ECJ that favors further integration, the existence of many economically motivated litigants, and an ability to act without immediate response from the member states—a combination unlikely to be replicated (Alter 2001). In shaping the overall trajectory of European integration, the ECJ, despite its importance, cannot be treated as an institution on par with the Council of Ministers or the European Council. Scholars also stress new policies, even when they have produced few concrete results, because of their purported potential to create unintended spillover. A fine illustration is EU social policy, which has inspired an enormous academic literature and considerable political attention—despite general scholarly consensus that European regulation has had almost no impact on national social policies (outside the juridically exceptional, but much studied, area of gender equality), nor much potential for doing so in the future.

Second, scholarship *exaggerates the centralization of EU governance*. Scholars have tended increasingly to focus on the EU as a unified political system, rather than as a confederal structure for cooperation among nation-states with a limited mandate. Again, scholars tend to 'select on the dependent variable', paying disproportionate attention to situations in which central institutions appear autonomous. Selection bias weighs down the literature on the Commission, where disproportionate scholarly attention has been paid to a relatively small number of categories of policymaking in which the Commission has exploited unexpected autonomy proactively to promote integration within its 'everyday' legislative and regulatory functions. A handful of examples are constantly recycled: some environmental policy directives in the 1970s, telecommunications regulation under Article 90, some parliamentary actions in the mid-1990s, and gender equality. These are peripheral to the overall trend in EU policymaking, and often occurred under conditions predicted by structural theory. A recent case of overemphasis on institutional innovation is the enthusiastic and extensive scholarship on the

OMC, whereby member states exchange information, benchmark policies, and evaluate results. One leading constitutional lawyer views OMC as a striking formal innovation that is ushering in a new form of constitutionalism (De Burca 2003). Policy analysts view it as a fundamental shift in the nature of regulation, if not modern state formation (Zeitlin 2005). Distinguished political philosophers herald a new form of political legitimacy. Social theorists view it as the central element in an emerging European identity, and the basis for balancing the 'neoliberal' tendencies of the EU (Cohen and Sabel, forthcoming). Numerous students of social policy view it as a promising road for future spillover and integration in a 'historical institutionalist' mode. Yet only the most speculative and specialized of empirical evidence suggests that OMC has had any impact on EU policy outcomes. Controlled empirical studies of the process of European social policy cooperation agree that its substantive results to date have been extremely modest, if they exist at all (Zeitlin, Pochet, and Magnusson 2005). In contemporary scholarship, social policy and OMC receive far more attention than the CAP or the common commercial policy (CCP)—though the latter are surely of far greater importance.²⁰ These may seem like detailed quibbles, but summed across EU scholarship as a whole, they add up to substantial source of misunderstanding.²¹

Third, current scholarship *exaggerates the European democratic deficit and the prospects for redressing it*. Philosophers, political scientists, and legal academics systematically overlook the virtues of the EU's constitutional status quo and exaggerate those of democratic reform (this section follows Moravcsik 2002, 2004). For some this is perhaps because they, unlike the majority of Europeans, are committed to a more federalist future. Yet there is surely another, more influential, utopia at play here as well: Many assert that fully deliberative and participatory democracy is the fundamental philosophical ideal underlying modern democracy and that it ought to serve as a blueprint for applied constitutional engineering. Critics often charge that international organizations like the EU are illegitimate, because they are less intensely deliberative and participatory than sovereign states (Nagel 2005; Rabkin 2005). Yet, as we have seen above, it is inappropriate, impractical, and even counterproductive to hold the EU up to such a standard of pure and direct majoritarian democracy. No modern democracy meets the standard of pure procedural democracy and more importantly, *no*

²⁰ For an exception, see Meunier (2005).

²¹ Similarly, the phrase 'multi-level governance', in fact an accurate description of how the EU functions, has been appropriated to refer to any divergence from the lowest common denominator agreement among states that monopolize access to the EU, even though no respectable theorist holds the latter view of EU policymaking as a whole. A constant search for cases in which policy diverges from member state preferences obscures the fact that such preferences appear to be the major determinate of EU policy. The same can be said for complex institutional models of decision-making. For an empirically convincing demonstration of this, see Thompson et al. (2006).

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modern democracy aspires to do so. Recourse to constitutional delegation or insulation is not a flaw, imperfection, or substitute for more broad-based deliberative participation. Nor is it limited to incomplete or imperfect polities, as the EU is often wrongly supposed to be. It is an essential characteristic of modern democracies, which are not populist but constitutional.²² The justification for delegation and insulation of modern policymaking is not simply pragmatic, but deeply normative. In existing constitutional democracies, popular participation is not an end in itself but one instrument among others to achieve fundamental social goods such as equality, liberty, justice, or nondomination. More participation does not necessarily generate a more desirable outcome in any respect, whether more representative, popular, accountable, or effective policy. The entire enterprise of modern constitutional design and analysis is devoted to the exploitation of 'countermajoritarian' paradoxes—situations where a less 'democratic', in the sense of directly majoritarian, outcome is more desirable normatively. We consistently delegate to legislative representatives and cabinet members, judges, central bankers, government officials, designated experts, political elites, party officials, prosecutors, and public-private partnerships, because we judge these more efficiently and effectively to realize these social goods. We insulate policymaking in order to achieve more informed and expert input (as in many regulatory policies), to protect minority rights (as in human rights policies), to counterbalance powerful special interests (as in trade policy), to block tyrannies of the majority (as in social welfare policies), to resolve time inconsistency problems (as in insurance schemes) and other goals that most normative theorists would applaud.

Once we set aside democratic participation or deliberation—or any other purely procedural norm—as an absolute standard, and instead seek to design constitutional forms to achieve certain social goods, any effort to link normative principles to institutional design must rely heavily on the intermediation of empirical social science about how institutions really work. The relationship between political participation and policy outcomes is complex and often perverse, varying substantially according to the nature of the issue areas, social preferences, institutional settings, and strategic imperatives. Yet the legions of scholarly critics of the EU's democratic deficit have almost universally failed to recognize that their critiques, as we have seen, violate the most elementary among political science premises about the nature of political legitimacy, the motivations for political participation, the varied forms of accountability, and the likely consequences of plebiscitary politics. To the extent this is the case, scholars share the blame for the EU's recent constitutional debacle.

²² With regard to the EU, this point has been advanced most forcefully and consistently by Majone, whose essays of a decade are summarized in (2005). For more recent generalizations of this point to the international domain, see Grant and Keohane (2005) and Moravcsik (2004). For a general philosophical argument consistent with this view, see Pettit (2005).