

Introduction—The EU and Its “Constitution”: Public Opinion, Political Elites, and Their International Context

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The European Union is going about its regular business. It is putting forth proposals to keep the Doha Round alive, continuing to negotiate a major trade agreement with Mercosur in South America, keeping peace-keeping troops in Bosnia and Herzegovina, spending development aid in numerous poor countries, financially supporting the Palestine Authority while giving Israel preferential access to the EU market, investigating Microsoft's business practices, and battling over the reach and scope of an ambitious new legislative attempt to regulate the chemical industry. The EU Greenhouse Trading Scheme, the largest greenhouse emissions trading scheme in the world, is up and running. The European Central Bank is making monetary policy decisions while the euro makes up almost 20% of central banks' foreign currency holdings. The European Medicines Agency (EMA)

has called for suspending the sale of the children's vaccine Hexavac. The European Court of Justice, for its part, has recently declared illegal a high profile Italian law designed to prevent foreign take-

over of Italian energy companies. And the commissioner for Health and Consumer Protection is playing a leading role in the EU's response to the threat of a pandemic of avian bird flu.

Meanwhile, EU citizens are enjoying the benefits of the EU in very direct ways—when they fly on a low cost airline, make a phone call which is far cheaper than it otherwise would have been, study abroad while receiving credit back at their home institution, cross national boundaries without passport or customs control, or use the euro in any one of the 12 EU member-states which have adopted it. Although the EU is often characterized as a regulatory rather than a welfare state (Majone 1996), it is responsible for many policy outputs which are generally popular.

The defeat of the EU Constitution¹ in French and Dutch referenda held in mid-2005 has not blocked the EU from carrying out its usual activities. Those are currently subject to the Treaty of Nice as well as the other treaties which have been ratified since 1958 and are still in force. Nor has it affected the kinds of benefits to which EU citizens have become accustomed. While there is angst and confusion about the future

direction of the Union among political elites, it is important to note that the institutionalized machinery of governance which has evolved over nearly 50 years is in place and functioning. The fact that the Constitution's defeat did not alter the by now routine operations of policymaking highlights how embedded such policymaking is in the political life of an integrating Europe. The institutions of the European Union—the European Commission, the European Court of Justice, the European Parliament, the Council of Ministers, and the European Central Bank—are in place and doing the kind of substantive work they did before the Constitution was drafted.

Nonetheless, the Constitution's defeat is clearly an important moment in the history of European integration. For the first time, an agreement designed to further integration has been resoundingly defeated in two of the original six founding members of the European Union. Although supporters of the Constitution argue that the use of the referendum is an inappropriate mechanism for the approval of treaties, the referendum does enjoy a legitimacy which is difficult to negate. The impact of the “no” votes has been so great that many analysts argue the days of further integration in Europe are finished.

The medium to long-term impact of the Constitution's rejection, however, is far from clear. Even without the contingency endemic to international affairs, the Constitution's defeat very probably will have unanticipated consequences. And those consequences, in turn, may actually run counter to the predictions of those who argue that the future looks bleak for European integration.

Two basic arguments can be made regarding the implications for European integration of the Constitution's defeat. The first argues that the political context has changed so fundamentally that policymaking and the trajectory of further integration will be affected in irreversible ways. In that sense, the defeat is a strategic defeat for those who wish for Europe to move toward ever greater integration.

The second argues that, by contrast, this defeat will simply encourage Europe's political elites to continue the process of integration through means other than treaties put to a referendum. That process could include a new treaty

focused on the institutional changes incorporated in the Constitution which would be submitted to parliamentary ratification only. More interestingly, however, it could also involve moving toward further integration by using the institutional instruments currently available under the Treaty of Nice—in spite of the fact that political elites supported the Constitution because they viewed those instruments as too weak to allow further integration. Both arguments can be justified.

The Constitution

The Constitution was clearly meant to drive integration forward. Although the “Constitution” was actually a constitutional treaty since it had to be ratified unanimously and could only be amended unanimously, it was viewed as the next major agreement which would lead both to more integration among the EU-25 and pave the way for further enlargement. It was written in a less intergovernmental fashion than had been previous treaties. Although national governments negotiating in an intergovernmental forum had the last word, national and (especially) European parliamentarians had an important role in shaping its content and direction.

The comparatively diverse group of participants in the Constitution-drafting process highlighted the Constitution’s symbolic value. That symbolic value was in fact far greater than its actual substantive content would have warranted. And the question now stands—how much does its defeat matter?

Much of the EU Constitution was not new. It included “old” treaties which had been approved (at times in referenda in selected countries) and had been in effect for years. Those treaties will remain in effect. The defeat primarily affects proposed new institutional arrangements. Those included increasing the power of the European Parliament, establishing new voting weights for the various member-states, and strengthening the Union’s external relations. It may, therefore, become more difficult, at the institutional level, to construct a more cohesive European Union in the global arena. Finally, enlargement will become more problematic, as the proposed institutional changes were designed to accommodate new members.

A Strategic Defeat?

There is no doubt that the defeats have re-framed the process of European integration in the minds of Europe’s political class. There is currently a sense of indirection, of confusion, and of doubt as to where the grand project that the Six began with the Treaty of Paris in 1951 is going. The current climate is reminiscent of that which emerged after the Maastricht Treaty was approved by a margin of 1% in France in September 1992 and was only approved by the Danes in a second referendum in May 1993. At that time, too, the Commission was weakened, political elites were shaken, and the process of integration seemed much frailer than it had appeared only a few months earlier. The calls for full EU membership by the post-communist countries undergoing often difficult transitions to democracy added a kind of pressure which national leaders were at times reluctant to accept. Terms such as “a multi-speed Europe,” “variable geometry,” and a “Europe a la Carte” entered the political as well as academic discourse about future paths which European integration might follow (Stubb 1996).

Of course, the EU recovered in a spectacular fashion from the Maastricht crisis. Although a great deal was written at the time about the caution that elites would need to demonstrate given the French public’s reluctance to wholeheartedly endorse the next stage of integration, the European Union in 2005 looks very different from its pre-Maastricht incarnation. It created the new

institutions called for in the Treaty and continued to become more important as a global actor. The European Central Bank was established, the euro was accepted by 12 of the 15 members, and, on the international stage, the EU was critical to the establishment of an important new international institution—the International Criminal Court—as well as to the successful conclusion of the Uruguay Round. It even began developing a European Security and Defense Policy. Thus, the question arises of whether the long-term implications of the Constitution’s defeat will be as transient as were those of the narrow margin of victory in France (and the necessity of holding a second referendum in Denmark) during the Maastricht process.

The difference between Maastricht and the Constitution lies in the clear and unequivocal distinction between approval (however slim the margin) and defeat. Maastricht became the treaty in force—with its commitment to a single currency and a more united European Union acting on the global stage. Furthermore, it was a much smaller EU that had to deal with the aftershocks of the Maastricht debate—the then EU-12 could more easily regroup than the current EU-25 (soon to be 27).

The consequences of defeat could in fact be far more damaging than the consequences of a razor-thin ratification. The political momentum which has traditionally been so important for the movement toward further integration could be absent, for political leaders would be unwilling to act against public opinion. The lack of a “permissive consensus” on the part of electorates could lead to a protracted stalemate, paralysis, and a gradual drift away from the kind of goals and aspirations which are traditionally associated with further integration. In particular, the attempt to create a stronger global presence would be stymied, and the move toward bringing ever more policy areas under the EU umbrella would be stopped or even reversed. The role of the so-called Community method—which involves a key policymaking role for the supranational European Commission, the European Parliament, and the European Court of Justice—would be at best frozen. And further enlargement—beyond the accession of Romania and Bulgaria—would become impossible.

In a worst case scenario, the lack of commitment by political leaders to the European Union would gradually infect the EU’s institutions, for the latter’s effectiveness is in fact anchored in the willingness of national institutions and elites to support the overall project of integration by supporting its supranational institutions.

The view that the defeat of the Constitution will sap the political momentum from the Union privileges the role of public opinion in the process of European integration. It implicitly argues that the hitherto elite-driven process of integration has been fundamentally transformed. The role of a majoritarian representative institution—the national parliament—in ratifying treaties which advance European integration would have been diminished by the expression of voters engaged in direct democracy through the referendum. In fact, given the role of party government and party discipline in national parliamentary systems, the role of political parties would have been diminished.

Since the major political parties in Europe (whether in government or in opposition) have supported treaty ratification since 1958 and supported the ratification of the Constitution, the view that European integration will stall privileges public opinion *vis a vis* the opinions of governmental and party elites. In brief, the key support for integration—elite consensus—would become less powerful as an effective driving force.

The role of public opinion in European integration over the past 50 years has been ambiguous. The scholarly literature has come to varied conclusions, and in general scholars of European integration have focused on the role of elites in driving integration forward. Yet it is fair to ask how such an elite-driven process

could sustain itself over so many decades. The liberalization of markets in particular would have been expected to lead to more contentious politics directed specifically against the EU than has been evident (Imig and Tarrow 2001; Gabel 1998; Sbragia 2000). Perhaps the underlying assumption of those who assume that public opinion should be expected to play a central role in the integration process was most pungently expressed by Herbert Morrison, deputy prime minister of Britain at the time when the British Cabinet rejected the invitation to join the European Coal and Steel Community. As Morrison summed up the issue, “It’s no good. We can’t do it. The Durham miners would never wear it” (cited in Gilbert 2003, 42).

If public opinion were indeed to significantly slow the pace of integration or re-shape its nature in the post-Constitution phase, it would have entered the stage as a significant factor relatively late in the process of integration. Given that elections to the European Parliament have been viewed as “second order elections”—based far more on national issues and political cleavages as opposed to EU-wide political debate—and that elites have enjoyed a “permissive consensus” which they have used to deepen integration, the strengthening of the role of public opinion in determining the course of European integration would represent a major new phase in this project.

The EU: A Geo-Economic/Political Project?

Europe’s political elites, however, may well continue the process of European integration, enlargement, and global integration *even if* key aspects of the Constitution are not ultimately resurrected in some fashion. This argument views the European Union as a key geo-economic/political project as well as a complex variant of a (con) or (semi) or (crypto) federation/federalism-constructing exercise (Sbragia 1993; Majone 2006).

It is quite possible that the EU’s international dimension may well override the kinds of constraints imposed by public opinion. If the EU is viewed only or primarily as a domestic political system, the defeat of the Constitution would in fact be a strategic defeat. If the EU is also conceptualized as a geo-economic/political project, however, the defeat might well have unanticipated consequences which are far more conducive to further integration than might be evident in the short-term.

The beginning of the accession negotiations with Turkey in October in the face of widespread public hostility to Turkish membership symbolizes the determination of governments to carry out the promises they have already made to other international actors. Although governments opened the accession negotiations with Turkey after a good deal of conflict with each other and down-to-the-wire negotiations with the Austrian government (which wanted to leave open the possibility of a privileged partnership for Turkey rather than accession), what stands out is the fact that accession negotiations actually went forward as planned. A mere four months after the Constitution’s defeat, the EU was not only back in business, but back in a very difficult kind of business. Although many analysts argue that Turkey will never actually join, the very fact of opening negotiations has triggered a process of long-term change within Turkey that makes the outcome less predictable than the skeptics admit.

In a similar vein, the active engagement of the EU in the Doha Round symbolizes the understanding by elites that Europe’s economic well-being is nested within a larger—global—economic reality. Although French voters fear economic liberalization of the services sector, it is quite possible that at least some such liberalization will occur due to pressure from the Doha negotiations. The EU is enmeshed in a larger multilateral trading system, and the decisions made at that level affect it in ways which have not been well understood by either publics or political scientists.

I would argue that external challenges, although under-studied in the EU literature, have always been very significant in influencing the evolution of European integration.² The Soviet threat and the evolution of the GATT in the 1950s, the impact of de-colonization on states’ commercial interests in the 1960s, the changes in economic competitiveness in the 1980s, and the perceived need for greater military and political power during the Balkan crises of the 1990s have all been influential in the process. The dynamics of European integration have been embedded in the larger international environment, and that environment cannot be ignored in explaining the extraordinary depth of European integration.

More specifically, the implementation of the customs union in goods was supported by the GATT negotiations in the Kennedy and Dillon rounds (Langhammer 2005). The Single European Act which brought the single market to the EU was motivated in great part by the sense that European firms were falling behind their Japanese and American counterparts (Sandholtz and Zysman 1992) while the Maastricht Treaty was shaped in significant ways by the fall of the Berlin Wall and the end of the division of Europe. The restructuring of the Common Agricultural Policy was partially driven by the Uruguay Round negotiations (Patterson 1997). The movement toward a European Security and Defense Policy was at least partially a response to pressure from Washington (Howorth 2005) as well as to Europe’s failures in addressing the tragedy of the wars in the Balkans.

External economic and security pressures will continue to exert a deep influence. While some of the most immediate pressures have been addressed by extending membership to the EU-15’s neighbors, the enlargement process cannot keep meeting that challenge indefinitely. The WTO, the rise of China, changes in American grand strategy, and new security threats on the periphery of the Union will unavoidably push the European project in new directions as elites attempt to deal with emerging situations in world politics.

Some of the most significant institutional changes that the Constitution would have made were in fact designed to help the EU address foreign policy challenges in a more cohesive and effective way. Ironically, public opinion across the EU seems to favor a more unified global posture on the part of Brussels (German Marshall Fund 2005). Europe does not exist in a vacuum, and both elites and publics are aware of that basic fact. A more cohesive Euro-level foreign policy may therefore emerge even in the absence of the institutional changes that the Constitution would have produced. It is very likely that elites can pull mass publics with them in the area of foreign policy. In fact, the effort to strengthen the Union as a global actor can serve to link elites and publics more firmly than have economic policies of liberalization and regulation.

Economic integration, inevitably involving economic liberalization, is not as intuitively attractive as is a “stronger Europe on the world stage.” Whether such liberalization can be successfully presented to voters as necessary for the strengthening of the EU as a geo-economic project is unclear, but it is possible that the “twinning” of European economic and foreign policy integration would help make economic liberalization more appealing.

The argument that an elite-driven process of integration—which incorporates party, governmental, and many business elites as well as national parliamentarians—has suffered a disruption but neither a strategic change of direction nor a strategic defeat downplays the role of public opinion as expressed in the defeat of the Constitution. It assumes that elites will in fact be able to move toward further integration. External events will provide support for further integration—such as recent events in the area of energy have demonstrated.

One of the unanticipated consequences of the Constitution’s defeat in France and the Netherlands may be that integration will

proceed in new ways. Just as the defeat of the European Defence Community in 1954 led to the European Economic Community, so too the need to circumvent public opinion (or at least not consult it directly) may lead to new forms of integration. The American executive, for example, has developed a host of ways to deal with international affairs which essentially circumvent or limit the role of Congress. Executive agreements and “fast track authority” for trade agreements (now known as trade promotion authority) both have been designed to allow the executive to have more flexibility in international than domestic affairs.

Second, cohesion in the foreign policy arena may develop more quickly than it has heretofore. Integration in foreign policy has lagged integration in “domestic” affairs given the member-states’ concern with sovereignty. However, elites’ desire to continue the process of integration coupled with the need to matter in a world in which not only the U.S. but also such countries as China and India will be important actors may provide the impetus for moving forward in that area. The role that the EU has played since 1958 in the GATT/WTO provides a useful precedent.

The defeat of the Constitution ironically may lead national leaders to move forward, develop new mechanisms to forge agreements without creating a context in which referenda are called, and actually become far more cohesive in foreign policy than would have been expected. One of the motivating forces for the Constitution was the desire on the part of national elites that the European Union should become a more effective global actor. The defeat of the Constitution will not necessarily defeat that desire,

and external pressures will continue to entice national leaders to follow that road. Geo-economics and geo-politics have always provided a rationale within domestic politics for the insulation of representative institutions from direct constituency pressures. It is very possible that they will provide the same kind of rationale for the European Union.

If the EU is in fact framed or presented by elites as a geo-economic and geo-political project which will maximize European influence on the world stage and thereby help it respond to external events, it is quite possible that mass publics will become more supportive and that integration will move relatively rapidly in the one area that has been most resistant to Europeanization—that of foreign policy. Furthermore “sensitive” domestic areas clearly subject to external influences, such as energy, will become Europeanized far more quickly than one would expect.

The lack of institutional efficiency which the Constitution was supposed to remedy will undoubtedly make this process messier and more convoluted than the Constitution’s backers would have liked. That same inefficiency will, however, allow the new accession states to play a role more similar to that which the EU-15 have played and give them a chance to make their mark in the shaping of the EU-25. If external pressures do indeed allow political elites to move integration forward, convince public opinion that such integration is acceptable, and help integrate the new accession states politically rather than simply institutionally, the defeat of the Constitution may be viewed quite differently 20 years from now than it is at present.

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Notes

1. The “Constitution” was actually a constitutional treaty rather than a constitution as traditionally understood. However, the political debate in most countries used the term “Constitution” rather than “constitutional treaty,” and I

therefore shall use the term “Constitution” as well.

2. For a similar perspective on American politics, see Mayhew 2005.

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