Fallacies in Embracing a Silent European Public:
A Post Lisbon Treaty Analysis

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On 1 December 2009, the Treaty of Lisbon replaced the Treaty of Nice as the legal foundation of the European Union. The round of treaty reform that eventually produced the Treaty of Lisbon started off with a Europe-wide debate, adventured into a Constitution-making process, and came to a halt when French and Dutch voters rejected the Constitutional Treaty in 2005. It was with

an approach radically different from the one used in the making of the Constitutional Treaty yet comfortably in line with the routine treaty-reform business of the Union that essence of the Constitutional Treaty was rescued. This article compares the approaches adopted in the making of the Constitutional Treaty and the making of the Treaty of Lisbon in terms of the degree to which the public was allowed or encouraged to play a role. It further discusses the implications of this detour of treaty-reform process for future developments of European integration and concludes that the continual exclusion of the public from policy-making and treaty-reform constrains rather than facilitates integration.

Key words: the European Union, Treaty of Lisbon, Constitutional Treaty, Liberal Intergovernmentalism, politicization

I. Preface

A "period of reflection" was set after the French and Dutch referendums on the Constitutional Treaty. Upon the expiration of the extended period of reflection, the European elites, having reflected on EU matters, seemed ready to take actions again. In due course, the Lisbon Treaty was born without any delay. The period of reflection, it seems, has worked magic. One cannot but wonder whether the "reflection" of the European elites centered around how best to avoid further referendums, and how best to take the decision-making power from the European people back to the clear-headed elites themselves. After all, the European public had their chances, but all they achieved was nearly derailing the integration project.

This paper examines the elite attitudes toward giving the European public a voice in EU Treaty reform. It focuses on the sharp contrast between the "Constitutional Treaty period" and the "Lisbon Treaty period." During the Constitutional Treaty period, the European elites embraced the idea of giving the European public a voice. From the Europe-wide debate on the future of Europe, to the decision to go for the Convention method, to the impressive amount of promises by national governments on a referendum, the elites have time and again demonstrated their willingness to hear what the people have to say. In contrast, during the Lisbon Treaty period, not once was the idea of "listening to the people" brought back in. That any further

"unnecessary" referendums should be avoided quickly emerged as the consensus.

The Lisbon process also shows that the way the EU conducts business has gone back to "normal": the public is silenced, like they were prior to the Constitution-making process. The irony in this development is that, the burgeoning of all kinds of theorization about a more deliberative democracy in the EU, about the Constitution-making process being a modest but successful rectification of the democratic-deficit problem, and about the emergence of a European public sphere all became irrelevant in the Lisbon era.

After contrasting the discourses during these two periods, the paper turns to analyze whether the Lisbon backlash will hurt EU democracy in the long-run, or the silencing of the public just temporary. Two schools of thoughts are available. Those who had theorized on a more deliberative approach to democracy during and following the making of the Constitutional Treaty are likely to hold the view that prolonged elite avoidance to engage the public will be detrimental to further integration. Others, in contrast, argue that keeping the public silent will not hurt democracy. For these scholars, it is the Constitutional Treaty approach that had done more harm than good.

II. The Making of the Constitutional Treaty

Narrowing the elite-citizen gap, fighting the problem of popular

disengagement, and enhancing the democratic legitimacy of the EU were what instigated the decision to create a Constitution to change the way the EU does business.[1] In contrast with the secretive/behind closed door negotiation that the European citizens are used to, the Constitutional Convention was unprecedented in its openness and inclusivity. It was hoped that the European citizens, seeing the drafting of the Constitution unfolding in front of them and with the opportunity to participate, would find the Constitution at least acceptable.

Broad consensus existed among analysts and decision-makers alike that the Convention had achieved more than an Intergovernmental Conference (IGC) would ever have (Eriksen and Fossum, 2004: 448-9). Unlike in the IGCs, which are composed exclusively of government representatives, European and national parliaments as well as the European Commission all had representatives in the Convention. The proportion of government representation was diluted from one hundred percent in the IGCs to less than twenty percent in the Convention. By design, the Convention was meant to operate according the logic of deliberation rather than the logic of intergovernmental negotiation. Hence, in the course of the Convention, representatives of member states and EU institutions, ranging from federalists to euro-skeptics, leftists to conservatives,

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1. Events that brought into being the Constitutional Convention—including the talks by Joschka Fischer (1999; 2000), the positive responses from leaders of other states (Chirac, 2000; Ciampi, 2000; Verhofstadt, 2000; Blair, 2000), the Declaration on the Future of the Union, and the Future of Europe Debate—had in common the concern over how to bring Europe closer to its citizens.

"deliberated on all issues related to the EU, examined all possible reforms, expressed in public the largest spectrum of arguments ever made about the EU " (Magnette, 2003: 2).

This is not to say that there were no maneuvering and horse-trading during this process. As Magnette had put it, it was 'under the shadow of the veto' that deliberation took place in the Convention (Magnette, 2003: 1). Compared with previous treaty drafting and reforming experiences, however, the style of the Convention decidedly turned away from the traditional intergovernmentalist method.

Moreover, the transparent way in which most of the work of the Convention was conducted also increased the inclusivity of the process (Fossum and Menéndez, 2005: 407). All the discussions, records, documents, and written contributions exchanged among the Convention members were made available on the Convention website.[2] In addition, a list of all Convention members with their contact details was available on the website for public use. Citizens could also attend the plenary sessions by contacting the visitors service of the European Parliament. To reach non-internet-users, the Convention advertised its tasks and methods through all major European newspapers in order to encourage the media to launch debates of their own on the future of Europe (The Secretariat of the European Convention, 2002a; The Secretariat of the

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2. The IGC leading to the Treaty of Nice had already improved significantly with respect to making documents accessible to the public. All the official conference documents and those submitted to the IGC by the Member States, the applicant countries, and public and private organizations were available on the Council's website.

European Convention, 2002b). Moreover, following Giscard's instruction that "everyone must have an opportunity to be heard" (Giscard, 2002: 8), the Convention devoted four months—February-June 2002, the "listening phase" —to identify people's expectations and needs from the EU. The general perception of the Conventionnels also appears to be that the Convention is much more transparent than any similar practices before. "Up until now, there had been no such public debate, with such readily available public information about the major reform in the EU."[3] This perception seemed pervasive in spite of the much criticized and somewhat authoritarian style of the Presidium.

With respect to the civil society, a Forum was set up for the participation of organizations representing civil society. The contributions of all groups were published on the Forum website and served as input to the Convention discussions. The Secretariat provided regular overviews of contributions to the Presidium. This heightened degree of inclusivity and transparency rendered those who, "in the past, criticized the EU because it had been built behind closed doors, lost their argument" (Magnette, 2003: 2).

The deliberative style during the drafting process, the unprecedented level of openness and transparency, and the heightened degree of inclusivity all contributed to the belief (by political elites, the press, and scholars alike) that the ratification would be successful, even if marginally. The rejection of the Constitutional Treaty by the French and Dutch voters in the mid-2005 sent shockwaves throughout Europe;

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3. Interview with a Conventionnel, April 2004, Strasbourg.

European elites were utterly unprepared for such results. To avoid making any more wrong moves before figuring out where the Constitution-making went wrong, European leaders agreed to a "period of reflection." Given what happened later (i.e., the way the Lisbon Treaty was constructed), one cannot but wonder whether the main thing leaders learned during this period of reflection was that transparency and public participation are counter-productive to Constitution-making or treaty reform.

III. The Making of the Lisbon Treaty

The period of reflection was supposed to end by the conclusion of the Austrian presidency in the mid-2006. As was expected, the British, Austrian, and Finish Presidencies did nothing to re-initiate discussions concerning the constitutional future of the EU during the period of reflection. The sequence of the ensuing rotating presidencies, however, provided strong incentives for the European leaders to quickly wrap up the period of reflection. For the first half of 2007, Germany would hold the presidency. After that, Portugal and Slovenia would hold the presidency before another "heavy weight" (i.e., France) takes over in the second half of 2008. This situation prompted the European Council to take actions aimed at ending the period of reflection. At the European Council June 2006, the EU leaders agreed to extend the period of reflection, while noting that "best use should be made of the possibilities offered by the existing treaties in order to deliver the

concrete results that citizens expect" (Council of the European Union, 2006). Based on this consensus, the European Council gave the German Presidency the mandate to present a report on Treaty reform in the first half of 2007 (Council of the European Union, 2006).

Soon after Germany took over the rotating Presidency in January 2007, the period of reflection was declared over. The first move Merkel took regarding the Constitutional Treaty was to launch a fast-track campaign to get a slimmed-down version of the Treaty agreed, within a year, by member state governments without national referendums. The coincidence of the 50th year anniversary of the Treaty of Rome with the German Presidency was opportune for Angela Merkel to refocus intergovernmental talks on the constitutional future of the Union. The Berlin Declaration, which was signed by all member states at the occasion of the 50th year anniversary of the Treaty of Rome in March 2007, manifested the intention of all member states to agree on a new treaty to be ratified by mid-2009. Between the signing of the Berlin Declaration and the end of the German Presidency, Merkel proved her skills in resolving differences and brokering deals acceptable to all member state governments. To strip the new treaty of the constitution elements that many thought to be the reason for the Constitutional Treaty's fall, the word "constitution" will appear in neither the name nor the content of the new Treaty. The symbols of the Union, i.e., the flag and the anthem, will be deleted from the Treaty in spite of their continual existence in the real world. The denominations "regulations", "directives" and "decisions" will be retained, abandoning

"law" and "framework law" as the new denominations. The "Union Minister for Foreign Affairs" will be called "High Representative of the Union for Foreign Affairs and Security Policy" instead (General Secretariat of the Council, 2007). Most relevant to this paper, however, is the consensus that member states will not resort to national referendums in ratifying the new treaty, a move labeled by critics as "Constitution by the backdoor" (Bonde, 2007). One cannot but wonder, whether the "reflection" of the European elites did not center around how best to avoid further referendums, how best to take the decision-power from the European people back to the clear-headed elites themselves. After all, the European public had their chances, but all they achieved was nearly derailing the integration project.

The draft of the new treaty was made available in June 2007. It had just over 12,000 words—compared to 63,000 words of the Constitutional Treaty, and 70 articles—compared to 448 articles of the Constitutional Treaty. At the European Council meeting of June 2007, negotiations on the new treaty lasted from Thursday, the 21st until 5 a.m. on Saturday morning, 23 June 2007. The European Council reached a mandate for an IGC, to be convened before the end of July. It asked the incoming Portuguese Presidency to draw up a draft Treaty text and submit it to the IGC as soon as possible. The IGC had until the end of 2007 to finish the Treaty text so that ratification can be completed before the European Parliament elections in June 2009 (Council of the European Union, 2007).

Clearly, once the reflection period was over, the leaders were in a

hurry and completely done with the idea of consulting the people. The timeframe envisioned for finishing the new treaty—kick start of talks in June, IGC held between July and October, signing of the Treaty by 2008, and ratification completed by early 2009—leaves no room for the input of non-elites or non-insiders. Nor does the form of treaty reform provide any opportunities for citizen participation: The old way of Treaty reform, i.e., the IGC, has triumphed over public participation. The IGC started on 23 July 2007, with the final treaty text agreed upon on 19 October. On 13 December, the Lisbon Treaty drafted by the IGC was signed by all 27 member states.

It is ironic to look back at the original aim of the "period of reflection" that is,

> to enable a broad debate to take place in each of our countries, involving citizens, civil society, social partners, national parliaments and political parties. This debate, designed to generate interest, which is already under way in many Member States, must be intensified and broadened(European Council, 2005).

If this was ever the true intention of the EU leaders at the time, the period of reflection has—in spite of the EU leaders' claim that the period of reflection "has provided the opportunity in the meantime for wide public debate and helped prepare the ground for a solution" (Council of the European Union, 2007)— failed to fulfill its goal.

IV. Moravcsik's Diagnosis/Prescription

The turn of events between the Laeken Convention that gave the

Constitutional Convention the mandate and the making and ratification of the Lisbon Treaty seemingly provide a perfect case for Moravcsik's diagnosis for the fall of the Constitutional Treaty. For Moravcsik, "consulting the public" was where the Treaty reform process went wrong. According to this view, the "return to normal" in the making of the Lisbon Treaty, i.e., behind-door deals struck by elites with minimal public participation, is "good" for the future of the EU as well as for the citizens of the EU. First of all, involving citizens in determining which way the EU is going is "bad public policy" based on "bad social science." Secondly, the EU should be likened to independent agencies of the member state governments rather than a full-blown policy-making entity. Thirdly, given that the issues dealt with by the EU are not salient to European citizens, the public has little incentives to participate in EU politics. Fourthly, contrary to the belief that policy-makers at the EU level are not held accountable for their decisions, mechanisms for holding policy-makers accountable are existent and functioning well in the current system. Finally, the EU has reached the "constitutional settlement" even before the talking with regard the Constitutional Treaty began. To adopt the Constitutional Treaty is to undermine the "constitutional settlement" that has given the EU its stability and success in the past decade. I examine these reasons one by one in this section.

(i) Reason 1: bad idea to get citizens involved in EU affairs

While the collapse of the EU's constitutional project was a shock to many, it was "entirely predictable" to some. For Moravcsik, "the social scientific propositions linking the European constitution with increased legitimacy and trust via expanded participation and deliberation are empirically dubious. Bad social science makes bad public policy." The collapse of the constitutional project "should be a sobering lesson for those who would promote yet another attempt to *politicize* the EU issue by pressing for ratification of this or any other European constitution" (Moravcsik, 2006a: 235). Moravcsik argues that efforts to promote participation and legitimacy through populist and deliberative forms of democracy were doomed to fail, because "*it runs counter to our consensual social scientific understanding of how advanced democracies actually work*" (Moravcsik, 2006a: 221-2). Empirically, there is simply no evidence to support the beliefs of the advocates of constitutional reform that increased opportunities to participate would result in greater participation and more informed deliberation, or that increased participation and deliberation would generate common identity, institutional trust, and greater political legitimacy.

The main reason that the promotion of participation failed to lead to actual participation is because political participation is costly to most individuals. Hence, in general, "voter beliefs and choices must be structured by salient cleavages, restricted agendas, intermediary

organization, and cultural attachments." Absent of these conditions, citizens will not engage in informed political deliberation. Due to the fact that voters already have well-defined political identities and familiarity with the existing national institutions, cleavages and alliances, the cost for voters to participate at the European level is even higher (Moravcsik, 2006a: 227). Moravcsik emphasizes that, from the *normative* perspective, encouraging public participation in European affairs may be justified and desirable. From the perspective of *practicality*, however, due to the implausibility to transform participation into informed and meaningful deliberation, increased opportunities to participate will only produce negative side-effects (Moravcsik, 2006a: 232-3).

Analysts who argue for the need to democratize the European Union have, according to Moravcsik, made an unjustified comparison between the Union and ideal democratic states. Since the EU is only specializing in functions of democratic governments that tend to involve less direct political participation, prodding citizens to participate in European politics is both unreasonable and unwise (Moravcsik, 2002: 606). Similarly, Mény also argues that the belief that democratic governments are of the people, by the people, and for the people is but a myth (Mény, 2003: 9).

(ii) Reason two: EU as independent agencies of member state governments

Doubting the relevance of the "input-oriented" legitimacy

(consisting of vote counting and deliberation) to the EU, Majone, Moravcsik, and Zweifel focus their assessment of the EU's democratic performance on the "output-oriented" legitimacy of the EU (or consequential democracy) (Scharpf, 1999: 6).

To the extent that EU governance enjoys some legitimacy, the effective problem-solving capacity of the EU no doubt plays a central role. The EU is at a better position than the member states to resolve many of the problems faced by the states because of the transnational nature of these problems (Majone, 1994: 85).[4] Among other things, the supranational institutions of the EU are able to eliminate the problem of low credibility of intergovernmental agreements by monitoring and enforcing policies in individual member states. Moreover, given that regulation is a highly specialized type of policy making that requires a high level of technical and administrative discretion, institutions such as the European Commission and the European Central Bank are better equipped to undertake the task at the supranational level (Majone, 1994, 1998, and 1999).

Delegating power to non-parliamentarian bodies such as the European Central Bank and the ECJ is far from 'undemocratic,' but is consistent with the practice of most advanced industrial democracies (Moravcsik, 2002: 611-3). It is difficult to imagine a well-operating democratic system with no independent agencies isolated from voter

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4. Such as policing financial markets, controlling the risks of new products and new technologies, protecting the health and economic interests of consumers, reducing environmental pollution, etc (Majone, 1994: 85).

and interest group influences at all. In fact, these regulatory institutions fulfill their roles exactly through their independence and autonomy from particular group interests and the pressures of votes. Policy-makers are insulated in order to achieve more informed and expert input and to block tyrannies of the majority. For Moravcsik, Majone, and Zweifel, the EU functions just like a group of independent agencies of member state governments (Moravcsik, 2006a: 232, 238). This impartiality required to make the commitments of the Member States credible is the role the European Commission in particular and the EU in general was asked to play. The relative insulation of Community regulators from the short-run political considerations is exactly the comparative advantage of EU regulation (Majone, 1994: 94; Majone, 1994, 1998, 1999; Zweifel, 2002). The concept that the EU suffers from a democratic deficit is therefore erroneous, since the EU deals disproportionately with issues that, even within the context of a nation state, are left to the independent agencies (Moravcsik, 2006a: 239).

> Most analysts view the EU in isolation, and thus fail to appreciate fully the symbiotic relationship between national and EU policy-making—a division of labour in which commonly delegated functions tend to be carried out by the EU, while those functions that inspire and induce popular participation remain largely national. This gives observers the *impression* that the EU is undemocratic, whereas it is simply specializing in those functions of modern democratic governance that tend to involve less direct political participation (Moravcsik, 2002: 606).

In comparison with elected offices, such agencies—from armies, police, central banks, regulatory agencies to courts—do better in

winning citizens' trust at the national level. The same holds true at the international level, where institutions such as the European Court of Human Rights are highly respected by citizens even though voters are remote from and having no input in the way they function. As a corollary, instead of inviting more public participation and voter influence, the EU should remain isolated from these interests so as to allow it to do what it is best at doing, i.e., regulating.

(iii) Reason Three: Issue Salience

Moravcsik emphasizes that he questions the EU's strategy to engage citizens not because he thinks democratizing the EU is not normatively justified, but because the lack of interests on the citizens' part to deliberate on European affairs will result in negative side-effects of such efforts. The reason that citizens will not engage in informed and intensive deliberation even when they are given the opportunities to participate in EU politics through conventions, elections and referenda is "the lack of any new and salient issue that might form the basis of a new cleavage pattern" (Moravcsik, 2006a: 232).

> The issues dealt with by the EU are far less salient to them than issues dealt with by national governments. 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(Moravcsik, 2006a: 223-5).

In contrast, the most salient issues in the minds of European

citizens—fiscal outlays, social policy, health care, pensions, education, and infrastructure—remain firmly national (Moravcsik, 2006a: 226). At first glance, unemployment, inflation, and economic conditions may seem to be closely related to the EU, given the power of the European Central Bank in influencing these issues. However, "most policy analysts believe that today the most influential and most policy-relevant instruments for influencing employment and growth, and to a lesser extent inflation, involve fiscal, labor market and education policies—all of which remain national" (Moravcsik, 2006a: 225). When the issues handled by the EU are considered obscure by citizens, it is not surprising that they have little incentive to discuss, debate, or decide them, given the limited time, money, and energy. A wholesale shift of attention and attachment to EU matters is simply too costly. "Existing concerns…. must be swept aside to make room for EU issues. It is hard to see why rational citizens would want to do this" (Moravcsik, 2006a: 226).

(iv) Reason Four: Accountability *is* present

It is sometimes argued that, given the differences between the EU and the nation states, it is not reasonable to subject the EU to all the democratic criteria that the democratic nation states are accustomed to. Moreover, those who claim that the EU suffers from a serious democratic deficit problem are applying a set of criteria that are too ideal even for modern democratic states in the real world. What is more, even if we do apply the national criteria, which is 'unfair' to a

non-state polity like the EU, we would find that the EU is, in fact, performing better than most democratic states.

Moravcsik, for example, argues that the EU is far from a "strong state" or even a "superstate" as has been described by the Eurosceptics. Even after the expansion the EU's competence following a series of treaty reforms, the competence of the EU remains limited compared to a normal state. Not only does the EU have no essential police power and real army, the tax base consists only about 2-3% of national government budgets. The main areas of the EU's activities, as was mentioned earlier, primarily fall within the regulation of policy externalities resulting from cross-border economic activity. Even if the Lisbon Treaty is ratified, areas most jealously guarded by the member states—taxation, defense and foreign affairs, social security, and revision of treaties—will continue to be constrained by the unanimity decision rule. In addition, when compared to a normal democratic state, passing a law in the EU is exceptionally difficult even where the method of qualified majority voting (qmv) as opposed to unanimity is applied. Moreover, once a law is passed, the EU has little formal autonomy in its implementation, particularly given the small size of the Commission (Moravcsik, 2000: 4; 2002: 607). Hence, for intergovernmentalists, the EU's intergovernmental way of doing business is the best guarantee to the EU's democratic legitimacy: so long as the procedure for arriving at national preferences in each member state is democratic, legitimacy at the Union level is assured.

In fact, it is thanks to the intergovernmentalists nature that EU

policy-making is kept "clean, transparent, effective and responsive to European citizens" (Moravcsik, 2002: 605). On the one hand, the EP ensures the EU's direct accountability; on the other hand, democratically elected national officials indirectly ensure that the EU is held accountable (Moravcsik, 2002: 612). The intergovernmental elements in EU decision-making ensure that the mutual distrust among actors also constitutes a form of democratic control through "bargaining democracy." Bargaining democracy creates input-legitimation because the consensus rule prevents individual interests from being outvoted and forces actors to take interests of others into account. This can be more democratically legitimate than majoritarian democracy where the interests of the minority are easily overlooked (Héritier, 1999: 275).

(v) Reason Five: Constitutional Settlement

If the fact that the EU deals only with issues not salient to voters is indeed the reason for citizen apathy, is it desirable to introduce high salient issues to the EU? Schmitter argues that, citizens will have little incentives to engage in informed debate about Europe unless they are given a stake in it. An effective way to create such a stake is facilitating the emergence of new political cleavages based on salient interest. The EU should, for example, task itself with the job of redistributing wealth among the European citizens and eliminate extreme poverty within its borders. Granting immigrants and aliens full rights is similarly a good way to reorient citizens' political behavior on whether they benefit or lose from the system (Schmitter, 2000: 44).

From Moravcsik's perspective, however, such proposals are "manifestly infeasible," mainly because they would

> break with the existing European Constitutional settlement, divorcing the EU entirely from its ostensible purpose of regulating cross-border socioeconomic behavior and externalities. The result would almost certainly be political mobilization, but only at the cost of a higher level of opposition to the EU, domestic and interstate, than Europe has seen in several generations (Moravcsik, 2006a: 229).

Moravcsik thinks that rather than exposing the fragility of the EU, the collapse of the Constitutional Treaty actually demonstrates the EU's stability and success. It shows that the EU has

> quietly reached a "European constitutional settlement": and enduring set of substantive competences and procedures embodied in the amended Treaties of Rome, which define the scope of the EU's mandate, the respective competences of Brussels and the member states, and the institutional form of EU decision-making....Indeed, to judge by results rather than aspirations, the *status quo* has been remarkably successful—and never more so than in the past decade(Moravcsik, 2006a: 235).

There are two dimensions to the European constitutional settlement. In terms of policy *substance*, the EU has over the years gained more power in policy-making in various areas, and has become pre-eminent in trade, agriculture, fishing, Eurozone monetary policy, and some business regulation. It is misleading, however, to portray the EU as a superstate, since in areas of greatest public concern—including fiscal policy, social welfare, health, pensions, education, defense and immigration—the policy-making power still rests with member state governments. "This balance between national and European competences

is roughly what European, when polled, say they want" (Moravcsik, 2006a: 235).　In terms of the *institutional dimension*, the relative power among the Commission, the EP, and the Council is also just right. In spite of Eurosceptics' attempt to portray Brussels as a superstate headed by the Commission, treaty changes since 1970 have consistently empowered the Council of Ministers and the European Parliament at the expense of the Commission. Meanwhile, the overall powers of the EU remain limited due to its lack of administration, fiscal and coercive capacity (Moravcsik, 2005a: 364-368; 2005b: 1-4).

> The existing European constitutional settlement is more attractive, positively and normatively, than any feasible alternative…. Not simply because it generates outputs that Europeans would generally favor, but also because the current indirect democratic controls on EU policy-making are probably…. more effective means to generate meaningful accountability and deliberation than direct democracy would be (Moravcsik, 2006a: 236).

Based on this constitutional settlement argument, Moravcsik concludes that, what has proven dysfunctional in the past few years is neither the EU's policies, nor its constitutional structure, but its constitutional discourse. The dysfunctional constitutional discourse has failed to recognize that contemporary Europe rests on the "pragmatically effective, normatively attractive and politically stable" constitutional settlement. It is this settlement, rather than what the Euro-constitutional enthusiasts have proposed, that has proven popular and generally consistent with what citizens say they want the EU to do. Politicization through "democratic" reform, as the Euro-enthusiasts have been calling for, is not only impractical but also normatively

undesirable (Moravcsik, 2006a: 222, 237).

V. Counterviews

In this section I provide rebuttals against Moravcsik's assertion that the decision to engage citizens is "bad public policy based on bad social science." A few points with regard to the analytical approach adopted by this article need to be noted before entering into the substance of the counterviews. Like most works that deal with the EU's democratic deficit problem; this article is perhaps more in tune with political theory than with hard political science that follows the rational choice tradition. As such, its analysis relies heavily on logic and reasoning, and places less emphasis on empirical data understood in the rational choice sense (Bevir, 2010). True to the underlying core argument of this article that collective actions often involve truth-seeking deliberation, the article itself is an endeavor of truth-seeking deliberation. Deemphasizing empirical evidence is not, however, entirely out of choice. The lack of empirical data is an inherent problem for the democratic deficit debate. For instance, for those who believe that the democratic deficit does exist, no empirical data that can illustrate the effects of democratized supranational governance is available. If the availability of empirical data alone sets the limit for theory advancement, then democracy as a form of political structure would never have come to being. Democracy, after all, is nothing but an ideal form of political system (Tilly, 2007: xi). This is not to say that empirical evidence is irrelevant in the debate of

democratic deficit. Rather, the reality simply highlight that, with the EU being the most advanced supranational structure in the world, it is not surprising that the most readily available analytical instruments for democratic deficit are often found in the sub-field of political theory.

(i) Why public participation is not only desirable but imperative (Problems with Reason 1)

It is certainly true that making an entity like the EU democratic is much more difficult and challenging than making a state democratic. Citizens would have to familiarize themselves with a new set of institutions, recognize and help with the emergence of new political identities, contribute to new patterns of cleavages and alliances, participate in new civil society organizations. This fact, however, can hardly lead to the conclusion that these difficulties should not and cannot be overcome and that public participation can never be desirable at the EU level. In Moravcsik's view, advocating pan European Democracy is a "paternalist utopianism" because it commands citizens to pay high costs, even though they do not share the concerns of the "dedicated EU policy wonk's enthusiasm". As a result, forcing participation is likely to be counterproductive, because "the popular response is condemned to be ignorant, irrelevant and ideological" (Moravcsik, 2006a: 227).

Moravcsik is concerned about the costs of participating, while those he termed "Euro-constitutional enthusiasts" are concerned about the costs of no participation. From the days of permissive consensus to

the current extent of integration, the costs for citizens to not participate have risen significantly, and can only get even higher. Relatively little was in the hands of EU-level decision-makers in the days of permissive consensus; a lot more power and issues have since been transferred from the national to the European level. Given the increased power of the EU, it seems more reasonable to characterize those who insist on keeping the citizens out of EU decision-making—rather than the advocates of pan European Democracy—as "paternalistic." Common sense tells us that, asking for citizens' opinions can never be more paternalistic than simply making decisions for them without asking. Even if deliberation does not work wonder, it is striking how Moravcsik's model leaves no room for encouraging deliberation.

Moravcsik's portrait of the deliberative approach that underpinned "bad public policy" is very straight forward (chart 1), when in fact very few advocates of the deliberative approach would adopt such an unsophisticated set of causal relations. The implications of increased deliberation turn out to be a lot more sophisticated than Moravcsik has conceptualized.

Chart 1　Moravcsik's understanding of relationships between participation and legitimacy

| More Institutional Opportunities to Participate | ⇒ | Greater Political Participation | ⇒ | More Informed Deliberation and Decision-Making | ⇒ | Greater Common Identity Institutional Trust, Political Legitimacy |
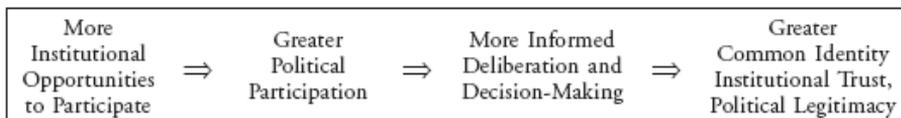
Source: Moravcsik (2002: 222).

Fishkin points out that Moravcsik's critique of EU popular consultation fails to distinguish populist from "deliberative" forms of democracy. "Unthinking mobilization is not deliberation. Talking to the like-minded is not deliberation. Careful structuring is required for an informed and civil exchange of views with proper design" (Fishkin, 2006: 1). Based on repeated experiments of "deliberative polling," Fishkin found that deliberation results in revisions of assumptions, opinions, preferences and decisions of voters, whereby lies the value of deliberation. To Fishkin's criticism, Moravcsik responded that "such experiments demonstrate the extraordinary input of time, money and information required to generate informed deliberation…. And the effects on public opinion and electoral behavior outside the room, even when the process is publicized, are at best unclear." Hence, "proposal for deliberative polling is, in practice, a proposal for deep deliberation *without widespread participation*—something very different than democratizing the EU" (Moravcsik, 2006b: 4).

The disagreement between Fishkin and Moravcsik is essentially that, for Moravcsik, "deliberative polling" as pioneered by Fishkin can work only for small-scale experiments. In the real world, deliberation is not plausible. This seems to miss the point that deliberative polling is trying to demonstrate: A mechanism is at work when people make an effort to understand a question from different perspectives. It is because of this mechanism that more deliberation can lead to more information/understanding, thus resulting in a revision of existing views/prejudices. It is because of this mechanism that increased and

well-structured deliberation can contribute to increased political legitimacy. Deliberation is not only a tool for reaching better decisions, "but also for learning through the testing of arguments." "The democratic procedure makes voice possible, challenges arguments and compels actors to justify their claims…. It spurs reflection over the process" (Eriksen, 2005: 17).

If "learning" is an expected effect of deliberation, then the rejection of the Constitutional Treaty may simply indicate that voters have not given enough time to learn. Similarly, if "structure" is crucial for deliberation, the rejection of the Constitutional Treaty may also indicate that the opportunities to participate prior to the referenda were not well-structured enough. The notion of participation, deliberation, and legitimacy gets even more complicated when we take note of the important functions played by a public sphere–a crucial factor overlooked by Moravcsik's model (Lu, 2008). The public sphere is a realm of our social life that hosts myriads of public forums, links small, private circles of discussion into larger, public conversations. Woven by a variety of media—print, electronic, and face-to-face encounters—it occupies the space between the scattered, ill-informed, and poorly developed private opinions on the one hand, and the approximated public opinion on the other. By synthesizing streams of communication and sustaining the public competition of private arguments, the public sphere helps to channel relevant societal problems into topics of concern that would allow "the general public to relate, at the same time, to the same topics" (Habermas, 2001: 17). What takes place in

a public sphere is a collective effort of truth-seeking both in the sense of objectively/scientifically determining cause-and-effect relationships and subjectively/normatively building/renewing the value-system of a society (Risse, 2000).

The view that the EU is in need of a public sphere in order for citizens' voices to matter is often criticized as wishful thinking. Yet rather than constructing a European public sphere from scratch and copying models of domestic public spheres, a community of Europeans can emerge through the Europeanization of public spheres and identities.

> We can meaningfully speak of a Europeanization of public spheres, the more the same (European) themes are controversially debated at the same time at similar levels of attention across national public spheres, and the more similar frames of reference, meaning structures, and patterns of interpretation are used across national public spheres and media (Risse, 2010: 11).

The presence of a European public sphere—or Europeanized public spheres—would make deliberation prior to any referendum less *ad hoc* and hence more effective. It makes accessing information regarding European affairs part of EU citizens' daily lives. When a referendum is in view, quarrels and deliberations would then take place within the *pre-existing* sphere. Unlike the experience of the Constitution-making where forums and communicative channels were artificially built within a vacuum in a short period of time, deliberation and debates taking place within a constantly existent public sphere—as is the case in any given democratic country—would reach further in materializing the goal of truth seeking.

This is not to say that were deliberation perfectly structured and the European public sphere in existence the results of the French and Dutch referenda would definitely have been "yes." Rather, the emphasis on the importance of a public sphere only tells us that meaningful citizen participation has not yet been put to a true test during the making of the Constitutional Treaty owing to the absence of a public sphere and the deeply flawed deliberation design. The Constitution-making experience is therefore not a useful case for assessing effects of citizen involvement. Instead of taking citizens through roller coaster rides that started with the hyperbole of "Europe-wide debate" and coming to a sudden halt with the silencing of the public in the making of the Lisbon Treaty that followed suit, the European Union and Member State governments could make the European public sphere more feasible by taking small yet constant steps in stripping the *ad hoc* nature of debates on European affairs in facilitating the emergence of a European public sphere.

Nor is the emphasis on deliberation and public sphere a necessary support or rejection of the method of referendum. The point this article wishes to drive home is the importance of having citizens have access to, be familiar with, understand, and voice their opinions on issues concerning Europe. As a form of aggregative democracy, referendum cannot be ruled out as a plausible method of having citizens' voices heard. Yet without any doubt, referendums without any debates, deliberation, information dissemination, and communication can yield results that are beneficial to none. Hence, what matters is whether

effective efforts are made to minimize the chances that voters cast their votes in complete ignorance, apathy, or as a statement to grievances unrelated to questions asked in the referendum. Studies on referendums on European integration have shown that the "*supply of information* determines the extent to which individuals have the opportunity to form attitudes towards the issue of European integration in the first place and the information environment also dictates the type of cues and endorsements that elites make available to voters" (Hobolt, 2009: 31). Referendums can therefore produce intended results (i.e., finding out what citizens want) only if information, elite cues, and chances to debate were made available prior to the vote, since empirical studies have found that

> the more a voter knows about European integration and elite positions, the better able she is to judge whether a specific proposition on the ballot is compatible with her own preferences, and the more likely she is to vote on the basis of these preferences and to resist elite recommendations that are contrary to her views (Hobolt, 2009: 59).

In sum, the Constitutional Treaty may represent a case where the deliberative approach prevailed based on the notion that increased deliberation would enhance legitimacy. Instead of demonstrating that "deliberation does not work," the rejection of the Constitutional Treaty may very well be demonstrating the cumulative, negative effects of chronic lack of public participation. The criticism that analysts too often make unjustified comparison between the EU and democratic states is itself unjustified in the sense that the "entities"—including both "states" and "the EU"—are not what democratic systems are

concerned with. It is the "people" that make the discussion of democracy relevant at all.

> One cannot… jump from the "reasonable claim that the EU is a non-state political system (Hix, 1999) to the conclusion that it can be legitimized by lesser standards than the state" (Lord and Beetham, 2001: 445). In other words, whether one considers the EU a state should not determine the democratic standards that the Union needs to apply. These depend on the powers that the polity has(Jolly, 2007: 8).

The fact that the EU as a political system is different from a state does not justify the diminishing relevance of citizens in political processes. As long as politicians and analysts believe that the European people deserve to have a say in decisions that affect their lives, ways have to be found to compensate for the lost accountability/legitimacy/democracy, whether the EU can or cannot be likened to a state. Institutions are but tools for achieving democracy, not the main subjects for democracy.

(ii) "Independent" from what? "Best interests" for whom? (Problems with Reason 2)

The analogy of the EU to the independent agencies within a democratic state is problematic. It was based on this erroneous analogy that Moravcsik, Majone, and Zweifel went on to conclude that the EU does not suffer from a serious problem of democratic deficit. The analogy is false since the supposedly independent agencies cannot really be "independent" in the same way as they are in the domestic

context. One cannot explain "from what" these agencies are independent without tackling the problem of *demos*—or at least a European public sphere—first. At the national level, the independent agencies—even though isolated from the voters—have a clear idea about what "the best interests of the nation" is, mainly because of the existence of functioning representative bodies (e.g., parliament) and a lively public sphere along side these agencies. In contrast, the EU is not equipped with well-functioning representative bodies nor a working public sphere to inform the EU (con independent agencies isolated from voters) what "the best interests of the EU" is. Ironically, for Moravcsik, Zweifel, and Majones' model to work, a European *demos* (or at least a European public sphere) is a prerequisite. Rather than relieving European voters of the anxiety with regard to the democratic deficit problem, the interpretation of the EU as functioning just like any given independent agencies can raise new alarm: Maximizing the interests of the entire Europe (as defined/understood by a group of experts) may run counter to the interests of individual countries. Who is there to decide when and how one country's interests should be sacrificed in order to achieve the greater good? Individual citizens' interests are now determined by a group of experts who somehow—even in the absence of a European public sphere and a well-functioning representative body—just "know" where the best interests of these individuals—whether German, French, Slovenian, or Polish—lie.

This understanding of the EU is contradictory to the Liberal

Intergovernmentalist portrait of European integration because as a European-level independent agency, the EU has to have the best interests of the entire Europe in mind. Even though "many of the member-states are equally bureaucratic, the fact that the Commission is "foreign" to everyone in all the member-states makes its administrative complexity far more striking and frustrating (Sbragia, 2002: 5)" (Jolly, 2007: 42). In the EU-as-independent-agency narrative, therefore, the levels of analysis have to be constant shifting: At one point, this problem-solving agency is working for a member state; at another point, this agency is working for the entire European society.

Moravcsik' belief that greater participation is unlikely to generate more popular trust and legitimacy is derived from his recognition that "democratic publics in advanced democracies generally like and trust insulated institutions—armies, police, constitutional courts and administrative bureaucracies, for example—more than legislatures or political parties." Just as this fact would not lead democratic states, in pursuit of greater popular trust, to remove legislatures and political parties and leave only armies, police, constitutional courts, and administrative bureaucracies to serve their people, the EU should not determine whether to establish or expand the power of particular institutions based solely on their popularity. Inserting deliberative function into a *system* through a certain institutions can increase the legitimacy of the *system* even if the *institutions* themselves (the ones responsible for generating and sustaining the deliberation) do not gain more legitimacy as the result of their expanded power. Independent

regulatory agencies are but the fourth branch at the national level—an appendix to the other three branches. No democratic systems had ever gained legitimacy based on output legitimacy *alone*; both output and input legitimacy are necessary conditions; neither would the EU (McCormick, 1999: 148). While the strengths of independent agencies are dependent on the isolation from special interests and voters, they are also dependent on the quality of the institutions of representative democracy (Bekkers et al., 2007: 300-301). In fact, too much output may even serve to decrease rather than increase the legitimacy of the Union (Jolly, 2007: 4).

Moreover, problem-solving is "inherently linked to reflection, reason-giving and reaching common understanding. The medium for this is *deliberation* as it compels actors to verbalize and justify their plans of action in case of conflict. This may change someone's attitudes or beliefs, which is necessary in order for actors to harmonize action plans voluntarily." Hence even though the relationship between "trust" and "deliberation" are not necessarily linear, when there is left with no room for deliberation, the system has no chance to become more trustworthy and legitimate. "Deliberation denotes an actor's attempt to come to an *agreement* about the definition of a situation, i.e. to reach a common *understanding* of how a given situation should be described" (Eriksen, 2005: 16).

Majone and Moravcsik contend that playing an exclusively regulatory role, the EU does not redistribute resources. This portrait of the EU as almost apolitical is contrary to the truth. EU policies have

significant redistributive consequences, "rendering a purely unique Pareto-improvement argument insufficient" (Follesdal and Hix, 2006: 551). "Practical problem-solving according to the standards of efficiency and the collective good, involves burden-sharing and the allocation of costs, hence bringing about questions of rights and justice" (Eriksen, 2005: 19).

> This concept rests on the insight that actor-neutral reasons are needed to justify a norm. Reasons based on self-interest do not fulfill the requirement of impartiality: morality entails upholding norms simply because they are right and because violating them is wrong, hence some disputes cannot be settled with reference to mutual advantage. Simply establishing an equilibrium outcome does not imply that it is right. When cooperation affects the interests and identities of the members, when it has distributive effects, conflicts have to be resolved with reference to higher-ranking principles and moral norms revolving on *what is equally just for all* (Eriksen, 2005: 22).

Finally, the argument that the EU serves as independent agencies of member states, rendering voter input unnecessary or even undesirable is questionable because "voters' preferences are not fixed or purely exogenously determined" (Follesdal and Hix, 2006: 545). If voters' preferences are fixed and exogenous to the political process, then there would be no difference between a democracy and a benevolent authoritarianism.

> A key difference between standard democratic and non-democratic regimes, however, is that citizens form their views about which policy options they prefer through the processes of deliberation and party contestation that are essential elements of all democracies. Because voters' preferences are shaped by the democratic process, a democracy would almost definitely produce

outcomes that are different to those produced by 'enlightened' technocrats (Follesdal and Hix, 2006: 545).

iii.   Issue salience endogenous to political process (Problems with reason 3)

Moravcsik's issue salience theme is striking in its arbitrariness and wholesale nature. The salient/non-salient divide seems to suggest that, for each issue, there is an invisible continuum that measures its salience. Beyond a certain point on this continuum, an issue becomes salient in voters' minds. For this conceptualization of issue salience to be useful, one needs to define and earmark these points *beforehand*. In other words, given that, under normal circumstances, citizens assign different importance to the same issue at different times, Moravcsik needs to set where the points are beyond which an issue would become salient enough for citizens to begin to care about. As things stand now, it is difficult to tell whether: (a) voter indifference in a certain issues resulted in their becoming EU competency; or (b) issues that are dealt with by Brussels are too remote for citizens to ever perceive them as salient; or both (a) and (b). For most scholars who are concerned with the problem of democratic deficit and consider increased citizen participation and deliberation plausible remedies, (a) and (b) combined best describe the current reality of issue salience. For Moravcsik, however, to say that European citizens have failed to show interests in a certain issues because these issues are determined at a too distant locale (i.e., the EU) is to put the cart in front of the horse: Citizens fail

to participate and deliberate because they are not interested in and don't care about those issues, not because the EU is not democratic enough and provided insufficient opportunities for participating and deliberating. Moravcsik does concede, however, that a wholesale shift of attention and attachment to EU matters is simply too costly. "Existing concerns…. must be swept aside to make room for EU issues. It is hard to see why rational citizens would want to do this" (Moravcsik, 2006a: 226). In other words, he acknowledges that an issue that was once non-salient can become salient one day. Given that there is no way for the issue to travel back to the member states, however, the newly found salience *should*—according to his own issue salience argument—generate European-wide interests and debate. Yet his own argument also tells us that this would never happen owing to the unreasonable costs the citizens have to bear. What are citizens left to do? Ironically, this problem is exactly why scholars urge for more participation and deliberation, an approach that had been written off by Moravcsik as "bad social science."

That the salience of an issue can be dramatically enhanced after the issue was transferred to EU level is exemplified by the recent economic imbroglio in the Euro area. Moravcsik insists that in spite of the power of the European Central Bank, it is national fiscal, labor, and education policies—rather than ECB's monetary policy—that can determine economic conditions in the Euro area (Moravcsik, 2006a: 225). Yet most analysts agree that the complexity and severity of the current economic and financial crisis can find their roots in the unified

European monetary policy despite significantly varied national fiscal conditions (Krugman, 2010). Taking away from national governments the decision-making power in monetary policy while leaving—in spite of the Stability and Growth Pact—fiscal policy in their hands not only helped creating the crisis in Greece but also forced citizens of other Euro countries to swallow austerity policies as a consequence. Hence, labeling economic, fiscal, and welfare policies as "salient" so as to explain the preserved national competence in these areas and monetary policy as "non-salient" so as to explain the EU competence in Euro becomes problematic. The profound connections among issues highlight the implausibility of using the salience of individual issues to explain the level of decision making. Even when monetary policy becomes salient as a result of financial crisis, high unemployment, and austerity, monetary policy will continue to fall within EU competence instead of nimbly bouncing back to the national arena.

Attributing citizens' inability to engage in informed deliberation to the low saliency of issues is to misread the lack of means for citizens to participate in the EU affairs as apathy by choice. Where the habit of participation and deliberation do not exist, citizens lack the proper knowledge and means to understand, sort out, and determine the salience of issues and the desirability of placing new issues on (or off) the EU agenda. A debate over a policy issue cannot exist in the absence of articulation of positions on different sides of the issue. The salience of a policy issue, in other words, is endogenous to the political process (Follesdal and Hix, 2006: 546). Not only are the

citizens too poorly-informed to be able to form collective opinions and express popular will, but the trajectory of European integration also fails to convince the citizens that their opinions really matter. The prevailing journalistic styles of reporting EU news, which inform citizens about legislation only after their adoption and leave out the vital details of what influences had been exerted and by whom, only reinforce the perception that public opinions matter little (Schlesinger and Kevin, 2000: 216).

Even as new studies show that MEPs are increasingly likely to vote with their European political groups as opposed to their national colleagues, and that there has been increasing policy contestation within the Council of Ministers, it is "very difficult for academics or the media, *let alone* the general public, to follow meaningfully what goes on inside the EU's primary legislative chamber" in the absence of full transparency of amendment procedures, agenda-control rules and even the recording of roll-call votes when votes fail (Follesdal and Hix, 2006: 553).

Low issue salience is, in sum, a poor indicator for determining whether there should be more participation and deliberation. The low current issue salience is certainly not a justification for no democracy, "as long as it may equally well be the result of a lack of democratic arenas for contestation" (Follesdal and Hix, 2006: 551).

(iv) You can't have the cake and eat it too (Problems with Reason 4)

Moravcsik's claim that mechanisms for holding the EU accountable are present and functioning well contradicts not only to the common understanding of the EU's democratic deficit problem but also to some of his own arguments concerning how democratic the EU is or should the EU become more democratic. On the one hand, Moravcsik argues that democracy will hurt the EU; on the other hand, he argues that the EU is already very democratic. Similarly, he argues that the EU *is* legitimate mainly because it has exceptional achievements, yet he also argues that we don't need to be alarmed by the lack of transparency and public participation because the EU does not deal with things citizens really care about. He cannot have it both ways: either democracy (hence further democratization) is desirable for the EU or it is not (hence the recognition that the EU is being held accountable should cause alarm). Either the EU has made a lot of good policies in areas people care about (hence deserving to be deemed legitimate given the impressive output) or the EU has no power in these areas (thus requires no scrutiny and input from the people).

Many of these contradictions originate from the fundamental incompatibility of liberal intergovernmentalism with the notion of democratic deficit. In liberal intergovernmentalism, national preferences of member states are exogenous to the process of European integration. The view that "integration has been driven primarily—as

Jean Monnet and his social-scientific counterparts, the neofunctionalists, long maintained—by a technocratic process reflecting the imperatives of modern economic planning, the unintended consequences of previous decisions, and the entrepreneurship of disinterested supranational experts" is erroneous. "The integration process did not supercede or circumvent the political will of national leaders; it *reflected* their will" (Moravcsik, 1998: 4). Preferences of member states, in other words, are formed *solely* at the national level, which then serve as the bottom lines in the intergovernmental negotiations at the EU level. Since the EU plays no role in influencing decisions of member state governments, it would be preposterous to hold the EU institutions, which only reflect national preferences, accountable.

Seeing the EU from the liberal intergovernmentalist perspective, therefore, there is no way the EU suffers from the democratic deficit problem. This might explain Moravcsik's inclination to deny the existence of a democratic deficit. This might also explain the ambiguity in his argument with regard to whether the EU *ain't broken at all* or *is broken, but the proposed ways to fix it are no good* (Moravcsik, 2006a: 236).

To insist, as does Moravcsik, that the EU has been effectively held accountable is to ignore the fact that European citizens have been deprived the power of "throwing out the rascals" who make decisions that directly affect citizens' lives. Who are the "oppositions" in Brussels? "If citizens cannot identify alternative leaders or policy

agendas, it is difficult for them to determine whether leaders could have done better or to identify who is responsible for policies" (Follesdal and Hix, 2006: 548).

> Consider those who favor an alternative set of policy outcomes to the current policies of the Commission, the Council and the Parliament. As the EU is currently designed, here is no room to present a rival set of leadership candidates (a government 'in waiting') and a rival policy agenda. This is different from the growing 'anti-EU' sentiment in many Member States, which often presents itself as the opposition to the EU establishment (Follesdal and Hix, 2006: 548).

(v) Citizens play no role in the Constitutional Settlement (Problems with Reason 5)

The point of the constitutional settlement argument is to demonstrate how much the EU has achieved without the participation/involvement of citizens along the way, so as to dissuade change and reform. "Why fix it if it ain't broken" is the apt attitude here. For Moravcsik, the "permissive consensus" is not only still existent, but will be sustainable. The meaning of having reached the constitutional settlement is that, to maintain this equilibrium, there should be little drastic changes in the future. The "amount" of Europe in the real world now matches the ideal amount of Europe citizens wish for, not more, not less.

This line of reasoning seems to suggest that European integration should remain where it is and stop moving and adjusting. This is a curious prescription since the environment Europe finds itself in is

constantly changing, thus calling for a constant renewal of the so-called equilibrium. This much of Europe may be just right for this moment, but as Europe finds itself faced with new challenges, more (or less) Europe may become desirable. This is why citizens' input is crucial: When reflexivity is stripped away, there is no mechanism left through which the EU can adapt to new challenges and needs(Bohman, 2005: 30-58).

Many of the examples and statistics given by Moravcsik as the evidence of the EU's "constitutional settlement"—how far European integration has gone and how much the EU has achieved—are subject to change. This is why appealing only to present policy outcomes, as the constitutional settlement argument is, is problematic. Inherent in the design of the institutions must be the ability and tendency to respond to new challenges reliably and sufficiently over time (Follesdal and Hix, 2006: 548).

The idea that the EU has reached a constitutional settlement and that any deepening of integration is thus counter productive is, once again, quite arbitrary and based on problematic reasoning. Whether or not European integration has reached some kind of arbitrarily-defined equilibrium has very little to do with the question of whether the Union needs further democratization. The defining of equilibrium can be less than arbitrary only when democratic mechanisms are brought into the system and the public can have a say in it. Moravcsik's tendency to link the so-called settlement with democracy—or to interpret the rejection of the Constitutional Treaty as citizens'

approval of the current situation—has to do with the preconceived concept/belief that Europe is integrated enough, that any further integration is not desirable. To those who think that further integration *is* desirable, Moravcsik insists that the EU should be recognized "as it is," rather than as they would wish it to be. The basic truth about Europe is that it has passed the point of no return and has become a 'mature' political system that does not need to keep moving forward on a "neo-functionalist bicycle" to remain stable. This is why instead of "politicizing" the EU, we should "depoliticize" it (Moravcsik, 2006a: 237). "One reason why Euro-enthusiasts overlook the virtues of the constitutional *status quo* is that they, unlike the majority of Europeans, are committed to a more federalist future that the current constitutional settlement would not support" (Moravcsik, 2006a: 238). Seen in this context, the constitutional settlement argument seems like a preemptive strategy to ward off federalist and neo-functionalist efforts of closing the gap between the real world and the ideal federalist or neo-functionalist "ever-closer Union."

Ironically, soliciting the idea of constitutional settlement creates the exact same effect, only in the other direction: the extent of integration would be locked at the current point. If the true intention is to give citizens what they want, and if it is true that politicians have the hidden-agenda of promoting an ever-closer Europe against the will of the people, is it not all the more important to establish better mechanisms to hold the elites accountable? Even though those who call for more deliberation and public participation may be easily

labeled as federalists or neo-functionalists, the truth about deliberation and participation is that, by definition, the finalité of the EU remains open. Giving the public more voice does not make a federal European unavoidable. Depending on the intention of the public, Europe may very well become more intergovernmental than it is now. The concern is not about the finalité but about the input. Integration by stealth, i.e., integrate quietly so that by the time citizens notice it's all a done deal, is what more deliberation and public participation are aimed at preventing.

The logic of the constitutional settlement argument is inherently contradictory and relies on selective reliance on voter wisdom. If the public cannot, as Moravcsik believes, be counted on to engage in informed deliberation, thus making increasing public participation a wrong approach to future integration, then there is little reason to believe that the same public can make informed judgment about whether or not the amount of Europe is just right. This contradiction is manifested in the fact that, one of the reasons the Constitutional Treaty and the Lisbon Treaty were rejected by citizens is that voters did not think the EU was "democratic enough," not because they are happy with the EU as is (EUobserver, 2008).

Another interesting paradox in Moravcsik's argument is that, he thinks *consulting the people* is not desirable. He also thinks *the Constitutional Treaty would have disturbed the Constitutional settlement* and was therefore not desirable. Ironically, were the people never consulted—as Moravcsik had recommended, the Constitutional Treaty

would be in force by now—as Moravcsik had recommended against, shaking the constitutional settlement.

VI. Conclusion

Is the silent public good for the EU? Moravcsik and others have argued that politicizing the EU and engaging the citizens have not only failed to bring positive results thus far, but are also the reasons for the collapse of the Constitutional Treaty. The EU has come a long way and have had tremendous achievements *without* the input of the public. There is no reason to believe that things will be different now or in the future, particularly when the EU has reached the constitutional settlement.

This article has argued otherwise. It refuted Moravcsik's reasoning one by one. Placing aside normative value judgment about the right and wrong of public participation in treaty reforms, the experiences found in the making of the Constitutional Treaty fail to demonstrate empirically that listening to the public brings Europeans to a dead end. In the absence of a European public sphere, the top-down, fast-food-style forums that were artificially created within a short period of time during the Constitutional Convention allows little meaningful persuasion, listening, reason-giving, and truth-seeking among Europeans. Empirically, in other words, public participation at the European level has not been put to a true test.

If normative judgment is not valued in social sciences and

empirical data is not yet available for supra- or trans-national democracy, then existing political theories become the best reservoir from which logics, reasons, implications and consequences can be retrieved to inform and predict political choices. This is also where the contribution of any political theory is supposed to lie. This article has demonstrated that none of the reasons cited by those who condemn the decision to bring the European people in treaty reform processes can find solid theoretical grounding in their arguments. Quite to the contrary, the literature of deliberative democracy predicts that further politicization of European affairs and encouragement of the public to voice their concerns are likely to make European integration more sustainable, regardless such voices call for more, less, faster, or slower integration. Indeed, politicization could make governance in the EU much more cumbersome, yet

> silencing the debates—the chosen strategy of European leaders in the aftermath of the failed referenda in France and the Netherlands in 2005 and Ireland in 2009—is no solution whatsoever. It only adds to the sense of alienation that many Europeans already feel with regard to the EU. Silencing emerging debates will ensure the rise of anti-EU populism across the member states (Risse, 2010: 8).

Politicizing the EU and engaging the citizens not only take time, but are extremely delicate and require sophisticated design and trial and error. The rejection of the Constitutional Treaty and the Lisbon Treaty may have dealt a blow to the EU, but this does not mean that citizens—as well as the elites—have not learned anything from the process. Moravcsik worries that "democratizing the EU would be expected, if it has any effect at all, to render it *less* popular and

legitimate in the eyes of publics" (Moravcsik, 2006a: 233). Democracy, however, has never been just about popularity. Moreover, if impressive policy output alone can justify the absence of democracy, the economic growth achieved by the Chinese government should long have silenced outside criticism and expectations about political reform in China. Nor should the demand of residents of Hong Kong to elect their legislators directly draw sympathy. Politicizing the EU may not successfully instigate enthusiasm among citizens. This does not, however, waive member state governments and the EU of the responsibility to make available communicative channels. Making the EU transparent and responsive is one thing, citizen enthusiasm is quite another.

Apart from positive reasoning, the competing approaches of silencing and engaging the public can be weighed against one another by comparing the harm the wrong approach would inflict on the EU. If the silent public is indeed good for the EU, adopting the wrong approach of politicizing and democratizing the EU would produce only limited negative results. While liberal intergovernmentalism is a product of focusing solely on grand bargaining at the expense of incremental developments, politicization and democratization can, by definition, only proceed by piecemeal. More importantly, if the EU has indeed reached the constitutional settlement, empowering the people would only result in voters putting the brake on imprudent and excessive measures to further integration. If, on the contrary, democratizing the EU is what the EU needs at this point, then going

back to the old way of behind-the-door horse trading (or preserving the *status quo*) and silence the public will be detrimental to Europe. For this reason alone, European leaders need to think twice before they decide to make the silenced public the norm.

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後里斯本條約時期「沉默的歐洲大眾」：負面意涵之分析

盧倩儀[*]

　　里斯本條約於 2009 年 12 月 1 日生效，取代尼斯條約成為歐洲聯盟一切運作之根本。歐盟此一回合之條約改革從一場針對「歐洲之未來」的全歐跨國大辯論演化為由制憲會議所主導之歐盟制憲運動，而後在 2005 年法國及荷蘭選民公投否決了憲法條約後，整個條約改革進程嘎然而止。在經過了一段思考蟄伏期之後，透過與制憲時期極其不同但卻是會員國所最為熟悉之傳統修約方式，歐盟以里斯本條約取代憲法條約，並獲得了會員國一致支持。本文針對公民在條約改革當中的參與及影響力就「制憲模式」與「里斯本模式」進行比較。結論指出，儘管排除公民之參與及影響就短期而言似乎致使整合進行較為順利，但長期而言卻為整合埋下更多阻力及變數。

關鍵詞：歐洲聯盟、里斯本條約、憲法條約、自由派政府間主義、
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